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APR - 9 2015
TOWN CLERK
WESTFORD

**Town of Westford
PLANNING BOARD**

Town Hall
55 Main Street
Westford, Massachusetts 01886
(978) 692-5524 · Fax: (978) 399-2732

MEETING AGENDA

Monday, April 13, 2015

7:15 PM Meeting

Blanchard School Auditorium

14 West Street, Westford, MA 01886

7:15 PM

Executive Session

To discuss strategy with respect to litigation, related to Newport Materials, LLC, vs. Planning Board of Westford, et al, as an open meeting may have a detrimental effect on the bargaining or litigation position of the Town.

7:45 PM

Open Forum

Review Minutes:

March 16, 2015

March 16, 2015 Executive Session *(Not for distribution)*

1. 7:45 PM

PB 1504 SPR/SP MCP/SP WRPOD/SP under 9.3/SWM - 20 Commerce Way (also known as 540 Groton Road) (Newport Materials LLC and 540 Groton Road LLC) Public hearing for a Site Plan Review (Section 9.4 of the Zoning Bylaw), a Special Permit for a Major Commercial Project (Table of Principal Use Regulations and Section 9.3A), a Special Permit for storage of hazardous materials within the Water Resources Protection Overlay District, Section 8.1) a Special Permit (Section 9.3), and a Stormwater Management Permit (under Chapter 147 of the Town of Westford General Bylaws) in order to construct an asphalt manufacturing facility and associated materials stockpile yard with a 10,000 gallon tank for storage of #2 fuel oil. The applicant seeks the above permits and any other permit or relief as may be required under the Town of Westford Zoning Bylaw and as may be required by the Decision issued by Land Court 10 MISC 429867. The subject property is identified as Assessor's Map 048 Parcel 0011 Lot 0234 and is within the Industrial A Zoning District.

These applications are being considered by the Planning Board on remand from Land Court in accordance with a Decision issued on December 8, 2014, as modified on January 6, 2015, in the case Newport Materials, et al v. Planning Board of Westford, et al. 10 MISC 429867.

Materials related to these applications and the Land Court decisions can be found on the Planning Board's Web Page under the tab "Asphalt Plant" at:
http://www.westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA_planning/index

Continued From:

*January 21, 2015
February 12, 2015
March 2, 2015
March 16, 2015
April 6, 2015*

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Victoria Johnson at 978-692-5524 or email to vjohnson@westfordma.gov.



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MEETING AGENDA

Tuesday, April 14, 2015

7:30 PM Meeting

Blanchard School Auditorium

14 West Street, Westford, MA 01886

7:30 PM

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PB 1504 SPR/SP MCP/SP WRPOD/SP under 9.3/SWM - 20 Commerce Way (also known as 540 Groton Road) (Newport Materials LLC and 540 Groton Road LLC) *Public hearing for a Site Plan Review (Section 9.4 of the Zoning Bylaw), a Special Permit for a Major Commercial Project (Table of Principal Use Regulations and Section 9.3A), a Special Permit for storage of hazardous materials within the Water Resources Protection Overlay District, Section 8.1) a Special Permit (Section 9.3), and a Stormwater Management Permit (under Chapter 147 of the Town of Westford General Bylaws) in order to construct an asphalt manufacturing facility and associated materials stockpile yard with a 10,000 gallon tank for storage of #2 fuel oil. The applicant seeks the above permits and any other permit or relief as may be required under the Town of Westford Zoning Bylaw and as may be required by the Decision issued by Land Court 10 MISC 429867. The subject property is identified as Assessor's Map 048 Parcel 0011 Lot 0234 and is within the Industrial A Zoning District.*

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Executive Session

Minutes

20 Commerce Way

(also known as 540 Groton Road)

Newport materials L.L.C.)

PB1504 SPR/SP MCP/SP WRPD/SP



File Number: PB 1504 SP MCP
540 Groton Road also known as 10 Commerce Way -- Asphalt Plant

Planning Board
Town of Westford
55 Main Street
Westford, MA 01886
Tel: 978 692 5524
Fax: 978 399 2732

Notice of Decision

PB 1504 SP MCP
Special Permit for Major Commercial Permit
10 Commerce Way / 540 Groton Road

Applicant: Attorney Douglas C. Deschenes for 540 Groton Road LLC and Newport Materials, LLC

Property Location: 540 Groton Road also known as 10 Commerce Way, Westford, MA 01886

Zoning District: Industrial A (IA)

Assessors Map and Parcel: Map 048 Parcel 0011 Lots 0234, 247, 248 and 0250

Lot Size: 115.52 acres (approximately 4 acres designated for proposed asphalt plant and related materials processing and storage areas.)

Application Submitted: January 5, 2015

Public Hearing Dates: January 21, 2015
February 12, 2015
March 2, 2015
March 16, 2015
April 6, 2015
April 13, 2015

Planning Board Vote: April 13, 2015

Filed with Assistant Town Clerk: _____

Appeal Period Ends: _____ (20 days after filed with Town Clerk)

Available for Pick-up: _____

DECISION

At its meeting on **April 13, 2015**, the Planning Board voted ____-____-____ to **APPROVE** a **Special Permit for Major Commercial Permit** submitted under Section 9.3.A of the Town of Westford Zoning Bylaw in response to the application for construction of an Asphalt Manufacturing Plant and Materials Processing Facility located at 10 Commerce Way, also known as 540 Groton Road. .

BACKGROUND

1. In 2009 – 2010 the Planning Board considered applications from the applicants to construct an asphalt (also known as “bituminous concrete”) manufacturing plant at 540 Groton Road. The Board held 21 hearings over the course of a year and in April 2010 denied the Site Plan Review and two Special Permit applications on the basis that the proposed plant did not qualify as a Light Manufacturing Use in accordance with the definition in the Zoning Bylaw (Section 10.2). That denial was appealed by the applicants, and following 4 years of litigation at Land Court, including a 3 day trial in November 2013, a Decision was issued that sent the case back to the Planning Board.
2. Therefore, the current applications are being considered by the Planning Board on “remand” from Land Court in accordance with the Court’s decision for the case Newport Materials, et al v. Planning Board of Westford, et al. 10 MISC 429867 (Decision). In that Decision, Judge Sands directed that “... *the Board’s assessment of any such resubmitted plans shall be made in accordance with the findings and rulings contained in this decision.*” (Sands, page 32). Therefore, the December 8, 2014 Court Decision and the subsequent January 6, 2015 Order and the transcript of the January 6, 2015 hearing are incorporated into the Planning Board’s record.
3. Under the Land Court Decision (LC Decision), the applicants were directed to resubmit applications for Site Plan Review (SPR), Special Permit for Major Commercial Project (SP MCP) and Special Permit for Water Resource Protection Overlay District (SP WRPOD). In addition, the applicants filed for a Stormwater Management Permit (SWM) under General Bylaw 147 and the Planning Board’s Rules and Regulations. The applicant also filed an application for a Special Permit under section 9.3 of the Zoning Bylaw. On January 21, 2015, the applicant requested withdrawal of the Special Permit submitted to the Planning Board under section 9.3 before the opening of the public hearing.
4. As directed by the Court, applicant submitted a Variance application to the Board of Appeals for multiple principal uses on one site. On January 16, 2015, applicant submitted a request for a Variance from the terms “quiet” in the definition of Light Manufacturing, so that they might exceed the noise criteria in Section 9.3A.
5. The applicant – at its own initiative, filed for two Special Permits to the Board of Appeals. One was for an extension of non-conforming use under section 3.6.2 and one was for a Special Permit under section 9.3 of the Zoning Bylaw. Subsequently the applicant requested withdrawal of the Special Permit submitted under section 9.3.
6. In accordance with the LC Decision, the Applicant must obtain a MCP SP, even if they obtain a Special Permit from the Board of Appeals to extend a non-conforming use and/or a Use Variance(s). Staff recommends to the Board that they require the applicant to provide detailed information relating to all the uses on the site as part of the Board’s review process.
7. In April of 2011, the Department of Environmental Protection (DEP) issued a Modified Clean Air Permit. The modified DEP permit was the result of a settlement between the applicants and 47 Chelmsford residents. The DEP permit sets specific conditions including but not limited to:
 - a. Specific emission limits and pollution control devices for 4 different emission causing elements of the project (DEP page 6)

- b. 60,000 tons of asphalt per month/300,000 tons per 12 month period
 - c. Operational hours of 6:00 a.m. to 7:00 p.m. Monday through Saturday, and not between December 15 and March 15.
 - d. Requirements for noise studies after the plant is operational;
 - e. Requirements for testing of emissions with DEP personnel present 120 days after operational;
 - f. Specific performance measures relating to air quality and monitoring of air quality; and
 - g. Specific equipment and operational procedures.
8. The LC Decision directed the applicants to resubmit a site plan application that addressed four factors, which are:
- a. Incorporate sound attenuation barriers as recommended by the applicant's acoustical expert;
 - b. Provide that there will be five or more employees at the project;
 - c. Request a variance to operate more than one principal use on the site; and
 - d. Address the issue of the project's power source(s) and show the Board that the power source is only electric or is another power source that is "substantially noiseless and inoffensive".
9. The LC Decision states that if the applicant submits such revised application, then *"it would appear to this court that the Project would then be permitted as of right as a light manufacturing use at Locus, subject to such conditions as the Board may reasonably require in order to approve Newport's special permit applications."* The Board has discretion to review the SP MCP and the SP WRPOD as allowed by state land use law and the Judge made clear in a hearing on January 6, 2015, that the Court was not ordering the Board to approve these Special Permits.
10. The Board of Appeals is NOT under the court's jurisdiction for the pending applications for Variance and Special Permits.

PROJECT SUMMARY

- 1. On January 5, 2015, the applicant submitted applications for a Site Plan Review, a Special Permit (WRPOD), a Special Permit for a Major Commercial Permit (MCP) and a Stormwater Management Permit and a Special Permit under Section 9.3 of the Zoning Bylaw for multiple uses. The applications included a narrative, a site plan, and technical information relating to the project.
- 2. Upon receipt of the application, the first public hearing on the proposal was noticed in the Lowell Sun on January 7, 2015 and January 14, 2015. On January 9, 2015, notices were sent to abutting property owners within 300 feet of the subject site, which included both Chelmsford and Westford Residents.
- 3. On January 21, 2015, prior to the opening of any public hearings, the applicant withdrew the application for Special Permit under Section 9.3 of the Zoning Bylaw. The Planning Board opened a concurrent public hearing for the two Special Permits, Site Plan Review and Stormwater Management Permit on January 21, 2015.

4. The applicant seeks to construct an asphalt manufacturing facility which is accompanied by an existing materials processing yard and two rock crushers. These facilities are located on approximately 4 acres in the middle of a 115 acre site (approximately 92 acres located in Westford, 23 acres in Chelmsford). The subject site consists of three tax parcels, all owned by the Applicant. Twenty-two (22) acres are developed with a solar array which is leased by the applicant to Nextamp/Carthartes Investments.
5. The site is accessed from Groton Road by a private way (Commerce Way) which is proposed to be developed as a 22-foot wide paved road. The applicant's plans show the location of a 20-foot emergency access way through an adjacent property (Fletcher Quarry) and onto Groton Road. No easement documents for the emergency access road were provided during the public hearings.
6. The proposed asphalt manufacturing facility (asphalt plant) consists of the following components which are on "skids" which site on top of concrete base (according to information submitted with the application):
 - a. 12' x 36' Operator Control Center on skids;
 - b. Six 10' x 14' Cold Feed Bins with a loading ramp from the materials yard;
 - c. Conveyor belts between the bins, vibrating screener and the processing unit (Gencor 400);
 - d. 5' x 14' Vibrating screen between the bins and the Gencor 400;
 - e. One proposed and "Future" 10' x 15' Recycled Asphalt Product (RAP) bin adjacent to RAP stockpile and ramp in materials processing yard;
 - f. Gencor 400, a machine that receives the ingredients from conveyor belts, which is controlled remotely and mixes the products together;
 - g. An 86' conveyor belt that takes the mixed product from the Gencor 400 to the silos;
 - h. Four (4) 200-ton silos (68' in height) and two (2) FUTURE silos that allow the hot asphalt to load into trucks that pull underneath where materials load into the trucks from the top;
 - i. Tank Farm with two 30,000 gallon indirect fired Asphalt Cement (AC) vertical tanks with unloading pumps (36 feet in height);
 - j. HYCGO Gencor 100 hot oil heater with expansion tank stand;
 - k. Lawn area, landscaping;
 - l. 3 parking spaces, one handicapped space with ramps and sidewalk with curbing;
 - m. Security fence with four entrance/exit gates;
 - n. Two truck scales near the silos;
 - o. One water well with a water line into the control booth;
 - p. Proposed utilities – natural gas line to provide fuel for the burners in the Gencor 400;
 - q. Site lighting with 20' fixtures around the asphalt manufacturing facility;
 - r. Dumpster;
 - s. Two 31,000 gallon fire cisterns;
 - t. Ground mounted signs including visitor, truck and directional signs;
 - u. Stormwater management facilities such as water quality swales; and
 - v. A 10,000 gallon aboveground storage tank for Number 2 fuel oil [unclear on plans, but indicated in the application].
7. Materials processing area as shown on the site plan AND confirmed during site visit.
 - a. Recycled Asphalt Product (RAP) stockpiles with a "Radial Stacker";
 - b. Crushing plant which includes two rock crushing machines;

- c. Entrance driveway and internal gravel driveway;
 - d. Loading ramps and numerous stockpile areas, some for the proposed asphalt operation and some for the existing operation of which are recycled Brick and Concrete;
 - e. Office and storage trailers (no parking area identified on plans).
- 8. The Planning Board had the benefit of two peer reviewers for the proposed project, James Barnes of Acentech, a sound expert, and Robert Michaud of MDM, a Professional Traffic Engineer.
- 9. The Planning Board considered the application in accordance with Sections 8.1, 9.3A, 9.4 of the Westford Zoning Bylaw and General Bylaw 147 and the Stormwater Rules and Regulations over the course of six public hearings, as listed above. At said hearings, an opportunity was given to all those interested to be heard in favor or opposition to said petition. On April 13, 2015, the Board voted to close the public hearing.
- 10. The written record contains additional materials including, but not limited to the following information. The entire written record is made part of this record of decision. Below is a SUMMARY of materials submitted to the Board during the public hearing process:
 - a. Application materials;
 - b. Plan entitled "SITE PLAN ASPHALT MANUFACTURING FACILITY 540 GROTON ROAD (ROUTE 40) WESTFORD MASSACHUSETTS" prepared by LandTech Consultants Inc. dated April 6, 2009, with latest revision date of March 26, 2015 and containing the following sheets:
 - 1) Title Sheet
 - 2) Existing Conditions Plan
 - 3) Existing Conditions Plan
 - 4) Overall Site Plan
 - 5) Site Plan
 - 6) Construction Plan
 - 7) Construction Plan
 - 8) Construction Plan
 - 9) Site Utilities and Lighting Plan
 - 10) Erosion Control Plan
 - 11) Erosion Control Plan
 - 12) Details and Sections
 - 13) Details and Sections
 - 14) Details and Sections
 - 15) Storm Water Pollution Prevention Plan (SWPP)
 - 16) Pre-Development Drainage Map
 - 17) Post Development Drainage Map
 - 18) Proposed Plant Layout (by others)
 - 19) General Component Elevations (by others)
 - 20) Tank Farm - Plan and Side Elevations (by others)
 - 21) Emergency Access Easement Plan, dated _____
 - 22) Entrance Modification Plan Last revised 4/9/15
 - c. Supplemental Data Report entitled "Asphalt Manufacturing Facility 540 Groton Road Westford, MA" prepared by LandTech Consultants, Inc. dated April 6, 2009.

- d. "Appendix G Stormwater Report "Asphalt Manufacturing Facility 540 Groton Road Westford, MA" prepared by LandTech Consultants, Inc., dated April 9, 2009, last revised October 27, 2009 30, 2014.
- e. "Acoustical Evaluation and Revised Acoustical Evaluation" prepared by Cavanaugh Tocci Associates (CTA) dated January 2, 2015 and March 10, 2015.
- f. "Traffic Impact Analysis, Proposed Bituminous Concrete Manufacturing Facility, Westford MA" prepared by Vanasse & Associates, Inc., dated February 20, 2015.
- g. Over 60 comments from the public and Town staff and boards as well as additional correspondence from the applicant, Peer review reports and staff notes.

FRAMEWORK OF DECISION

1. Land Court Remand

- a. The Planning Board (Board) considered the application for a **MCP Special Permit** under remand from Land Court Decision issued on December 8, 2014, *10 MISC 429867 (AHS) – Newport Materials, LLC and 540 Groton Road, LLC, Plaintiffs, vs. Planning Board of the Town of Westford and the Town of Westford, Defendants*, (LC Decision).
- b. Should the Board issue approvals for the requested permits, such approval is based upon the requirements and holdings of the LC Decision. The Planning Board has not yet had the opportunity to appeal from the LC Decision, as final judgment has not entered in the litigation, and it does not relinquish its rights to appeal the LC Decision. Of particular note, but without limiting the foregoing, the Board notes that the LC Decision holds that the proposed use would constitute a Light Manufacturing use allowed (with an MCP Special Permit) in the IA Zoning District. The Planning Board does not concur with this holding but is obligated by the LC Decision to accept it for purposes of this Remand. If this holding is reversed on appeal, any relief granted hereunder becomes null and void.

2. Major Commercial Project (MCP) Special Permit

- a. Section 9.3A of the Zoning Bylaw and other relevant sections of the Bylaw, including, but not limited to, Section 3.1.2 sets forth the regulatory framework for the MCP.
- b. An MCP is required **whenever one of the MCP criteria is triggered on a site**. For example, if a site has an existing 10,000 square foot building and the property owner wants to expand by another 10,000 square feet, this expansion requires an MCP because the total site would have 20,000 square feet, which exceeds the 15,000 square feet threshold, even though each segment of the project is under the 15,000 square foot threshold. In other words, the MCP thresholds apply to a property as a whole, and the various uses of that site may not be segmented into smaller individual projects to avoid MCP review.

More specifically, for the subject application, the MCP is triggered because the asphalt plant at full production as allowed by the DEP permit would generate well over 250 trips, while the applicant is willing to restrict the number of trips, nonetheless, the MCP is required (LC Decision p.____). The adjacent / integrated materials processing facility is permitted by a Special Permit issued by the Board of Appeals (BOA) in 2009, 2010 and 2011. That facility, on the same site as the proposed asphalt plant, is limited to "75 trucks per day" or 150 truck

trips, which is currently monitored through submittal of truck logs to the Town by Newport Materials. As described below, the Board concluded that the trips from the materials processing facility should also be monitored with those from the asphalt plant and the Board also found that the proposed condition of video monitoring (see Condition __) must include both facilities because it IS NOT POSSIBLE to distinguish trucks entering Commerce Way delivering products to the materials processing yard to be distinguished from trucks entering to get asphalt being produced at the plant, and in fact, it is possible that these could be shared trips.

- c. Therefore, the Board considers the entirety of subject site (115 acres) as being subject to the MCP and the conditions thereof.

3. Materials processing is part of the proposed bituminous concrete manufacturing plant (asphalt plant).

- a. The materials processing facility, which recycles asphalt, brick and concrete, was approved as a USE by the Board of Appeals in 2009, and the RAP production portion of that use is an integral part of the proposed asphalt plant operations.
 - i. The Department of Environmental Protection Permit (DEP Permit) includes both the asphalt plant and the rock crushing and materials storage facility. The DEP to regulated these uses together and it makes sense for the Board to do so as well.
 - ii. The site plan shows that the materials processing area and the asphalt plant are contained within a single fenced area and joined by internal driveways.
 - iii. There may be shared trips in which a truck delivering recycled asphalt for crushing at the materials processing facility may then be loaded with asphalt from the silos.
 - iv. The applicant has represented that up to 50% of the Recycled Asphalt Product (RAP) used for manufacturing of asphalt will be provided from the materials processing facility. The DEP permit allows up to 40% of the materials that make up the final bituminous concrete (asphalt) product to be composed of RAP. Given that the applicant has this material in hand at the materials processing facility, it is common sense to conclude that the applicant will use this supply in the production of asphalt.
 - v. Asphalt manufacturing components such as sand, fine sand, aggregate and RAP are shown on the site plan in the materials processing yard area.
 - vi. The asphalt plant is designed to operate with RAP, which is manufactured in the materials processing facility and also other ingredients for asphalt such as sand, fine sand, and aggregate are stored within the materials processing yard area.
 - vii. The materials processing facility exists without benefit of a Site Plan Review (SPR). The materials processing plant did not receive a Site Plan Review (SPR) approval in 2009 from the Planning Board. Section 9.4.1 of the Zoning Bylaw states that *"The following types of activities and uses are subject to site plan review by the Planning Board. 1. Construction, exterior alteration, exterior expansion of a nonresidential or multifamily structure or tower, or change in use..."* Therefore SPR for the materials processing facility is required.

- b. As described above, the proposed asphalt plant, as proposed, is designed to operate with RAP which is being produced in the materials processing yard. The two uses are physically and procedurally tied together. Therefore both facilities shall be considered and conditioned as part of any approval of the MCP and SPR.

4. Zoning relief required by LC Decision.

The LC Decision, as clarified by the Court at a Hearing on January 6, 2015, requires a Variance for multiple uses on a site. Applicants submitted a petition for Variance to the Zoning Board of Appeals (BOA), which is still pending at this time. The BOA's hearing is scheduled to be re-opened in early May 2015. The issuance of any approvals/permits by the Planning Board does not obviate the applicant from securing the necessary Variance relief from the BOA.

WAIVER

1. Applicant requested a waiver from the MCP standard 9.3A.4.2. Noise. Ambient Noise Level. No person shall operate or cause to be operated any source of sound in a manner that creates a sound which exceeds 70 dBA or 10 dBA above ambient, whichever is lower, when measured at the property boundary of the receiving land use.
- a. The applicant demonstrated, and the Town's peer reviewer confirmed that the construction of a 1,200 foot long sound attenuation wall at 35 feet in height along the westerly property line and sound source attenuation measures will meet the standard at the western property line. However, the applicant seeks a waiver from the construction of the wall and the performance standards. Specifically, the applicant requests the ability to cause sound that is 75dBA (and 32 dBA above ambient) at the westerly property boundary.
 - b. +-The Board voted ____-____-____ not to grant relief to the above waiver because _____

ALTERNATIVELY

- b. *The Planning Board voted ____-____-____ to grant relief by not requiring the 1,200 foot long 35' high wall but requiring sound source attenuation [alternatively by requiring an 8' wall and sound source attenuation] because _____.*
- c. *The Board conditions of approval include a requirement to construct said sound attenuation (sound wall) should the abutting property owner request such attenuation over the lifetime of the asphalt plant operation.*
- d. *Because the Board granted such waiver, in accordance with the LC Decision, Variance relief is required from the Board of Appeals. The Applicant submitted a petition to the BOA to exceed the definition of the term "quiet" in the light manufacturing definition which would allow them to produce sounds of 75 dBA which is 32 dBA above ambient at the western property line. The BOA public hearing on this matter is scheduled to re-open in early May 2015.*

FINDINGS

Special Permit for Major Commercial Permit (9.3.A.4)

9.3A.4 Standards.

The following standards shall apply to applications for special permits for Major Commercial Projects or Major Retail Projects:

1. **Lighting.**

- A. Shielding. All outdoor light fixtures shall be shielded so as to meet the goals of this Section.
- B. Light Trespass. Direct light from the light source is to be confined within the property boundaries.

The Applicant shows "low sodium yard lights" on the site plan sheets and the lights are 20-foot high downward facing fixtures. While the applicant did not provide an illumination lighting plan showing illumination levels, the applicant states that the proposed project is located 1,400 feet from the public way (Groton Road) and 1,360 feet from the nearest residence. The location of the lighting within a large parcel plus the fact that there was no evidence presented to the contrary, nor did any abutter or Board member raise a concern about light trespass or the need for further attention to lighting. ***The Board found that this criterion is met.***

2. **Noise.**

- A. *Ambient Noise Level. No person shall operate or cause to be operated any source of sound in a manner that creates a sound level which exceeds 70 dBA or 10 dBA above ambient, whichever is lower, when measured at the property boundary of the receiving land use.*

As conditioned to include a 35' high and 1,200 foot long sound attenuation wall, and sound attenuation at the sound source on the equipment of the asphalt plant as specified in the March 10, 2015 CTA letter. The applicant is further conditioned to monitor and report on actual noise levels after plant operation to ensure that plant operation is consistent with the sound estimates predicted by acoustic analyses. Should sound levels exceed the predicted levels, the applicant shall cease operations until such time that adequate sound mitigation is provided to meet the Noise Standards of Section 9.3A.4.2. Because of the proposed sound attenuation and the reporting of actual sound levels and the requirement to cure sounds if they are in excess of estimated sound levels, ***as conditioned, the Board found that this criterion is met.*** See Conditions #6 a to e.

[Insert alternate finding if Waiver granted or partial wall granted].

3. **Landscaping.**

- A. ***Street Buffer Strip.*** *Except for a required sidewalk, a landscaped buffer strip at least twenty (20) feet wide, continuous except for approved driveways, shall be established adjacent to any public road to visually separate parking and other uses from the road. The buffer strip shall be planted with grass, medium height shrubs, evergreens and shade trees having a minimum four inches in caliper measured four feet from ground level planted at least every thirty (30) feet along the road frontage. Evergreens and shade trees shall be at*

least eight feet in height at time of planting.

The subject Site is 115 acres, and the proposed facilities are 1,400 feet from the Public Way (Groton Road). There is a large wetland area and vegetation across most of the Site's Groton Road frontage. ***The Board found that this criterion does not apply.***

- B. ***District Buffer Strip.*** *A continuous landscaped buffer strip of at least ten (10) feet in width shall be provided and maintained in perpetuity between business and industrial districts and any residential districts and/or property lines. The landscape buffer strip shall be of a density to substantially screen the development in question from view, along the zoning district line in question. Plantings of various approved evergreen species are encouraged and shall be planted at a minimum height of six (6) feet.*

The site is bordered by Industrial A on all sides in Westford, and the Chelmsford Town Line. ***The Board found that this criterion does not apply.***

- C. ***Large Parking Areas.*** *Parking areas containing over 20 spaces shall have at least one shade tree per ten (10) parking spaces, such tree to be a minimum of 2½ inches in diameter and located either in the parking area or within 10 feet of it. At least 5% of the interior of the parking area shall be maintained with landscaping, including trees, in landscape islands or plots.*

The proposed parking area includes parking for 6 cars. ***The Board found that this criterion does not apply.***

- D. ***Fencing.*** *Fencing may be allowed in lieu or in conjunction with plantings. Design and height of such fencing, with accompanying landscaping, shall be subject to the approval of the Planning Board.*

The applicant proposes six foot (6') high chain link fencing around the asphalt plant and a portion of the materials processing yard. Due to the disturbed nature of the site, and the lack of visibility from all but one abutting property owner (Fletcher Quarry), the Board found that the proposed fence is adequate. ***The Board found that this criterion is met.***

- E. ***Retaining Walls.*** *Retaining walls shall be constructed to a maximum height of four (4) feet. If site conditions require elevation changes of greater than four (4) feet, retaining walls shall be terraced and landscaped.*

The applicant proposes retaining walls that are 6 feet in height which shall be designed by a licensed engineer. The applicant does not show terraced and landscaped retaining walls on the plans. Due to the disturbed nature of the site, and the lack of visibility from all but one abutting property owner (Fletcher Quarry), the need for terraced retaining walls is not needed. The Board conditions the applicant that any wall over 4' high shall be designed by a licensed professional (Condition #___). ***The Board found that this criterion does not apply.***

- F. ***Berms.*** *The Planning Board may require a berm or berms in appropriate circumstances*

to promote the goals of this section.

Due to the disturbed nature of the site, and the lack of visibility from all but one abutting property owner (Fletcher Quarry), the Board found that berms are not needed for landscape or screening purposes. However a berm is indicated to be built on the site plans to the east of the proposed asphalt manufacturing facility. The applicant is conditioned to construct the project in accordance with the site plans. ***The Board found that this criterion does not apply.***

- G. ***Screened Areas.*** *Exposed storage areas, refuse disposal facilities, machinery, service areas, truck loading areas, utility buildings and structures and other similar uses shall be screened from view from neighboring properties and streets using dense, hardy evergreen plantings, or earthen berms, or wall or tight fence complemented by evergreen plantings.*

Due to the disturbed nature of the site, and the lack of visibility from all but one abutting property owner (Fletcher Quarry), the Board found that there is no need for screened areas for landscape purposes. ***The Board found that this criterion does not apply.***

- H. ***Maintenance.*** *All landscaping features, structures and areas shall be properly maintained. Dead shrubs or trees shall be replaced within one growing season as a condition of approval.*

The applicant proposes landscaped areas and the Board conditioned that landscaping shall be maintained over the life of the project (Condition # ____). ***The Board found that this criterion is met.***

4. Stormwater Management.

- A. Consistency with the Massachusetts Stormwater Management Policy.** *All development shall comply with the Department of Environmental Protection's (DEP) Stormwater Management Policy (including Phase II Stormwater Management requirements), to ensure that the rate of surface water run-off from the site shall not be increased after construction.*

The proposed project is subject to a Stormwater Management Permit from the Town in accordance with Planning Board Rules and Regulations. The Town's Engineering Department and 2009 peer reviewer found that the project's stormwater management provisions are adequate and suggested specific conditions relative to the Operation and Maintenance of all Stormwater facilities (See Conditions # ____-to ____). **As conditioned, the Board found that this criterion is met.**

- B. Conservation Commission.** *Where applicable, no special permit shall be issued unless a report shall have been received from the Conservation Commission or the Planning Board's agent that the storm drainage system is consistent with DEP Stormwater Management Policy and that there is sufficient storm drainage capacity to meet the flow demands of the proposed development on-site, and where applicable, without causing surge in those storm drainage lines which serve the project and are consistent with the standards of the Town.*

The Town's Engineering Department and 2009 peer reviewer found that the project's stormwater management provisions are adequate and suggested specific conditions relative to the Operation and Maintenance of all Stormwater facilities (See Conditions # ____-to ____). **As conditioned, the Board found that this criterion is met.**

5. Site Development Standards.

- A. Land Disturbance.** *Site/building design shall preserve natural topography, reduce unnecessary land disturbance and preserve natural drainage on the site to the extent possible.*

Due to the disturbed nature of the site, and that a majority of the proposed structures are on "skids" and that the new stormwater drainage will improve conditions on the site, **the Board found that this criterion is met.**

- B. Site Design.** *Placement of buildings, structures, or parking facilities shall relate to the site's scenic qualities and shall blend with the natural landscape.*

The proposed project is located 1,400 feet from a public road, is only visible to an adjacent industrial use (Fletcher Quarry) and the portion of the site adjacent to the proposed facility is highly disturbed, **the Board found that this criterion does not apply.**

- C. Archeological or Historical Resources.** *The Planning Board may require applicants to submit the proposed development plan to the Westford Historical Commission and/or the Massachusetts Historical Commission for review and comment regarding possible archaeological or historical resources on the site.*

The applicant maintains that "there is nothing of Historical or Archaeological nature currently existing within the project site" and no evidence of any such resources was presented during the public hearings, ***the Board found that this criterion does not apply.***

- D. ***Preservation of Existing Vegetation.*** *Priority shall be given to the preservation of existing stands of trees, trees at site perimeter, contiguous vegetation with adjacent sites (particularly existing sites protected through conservation restrictions), and specimen trees.*

There is a portion of the site near the entrance that is mapped on the Natural Heritage Endangered Species Program (NHESP) the NHESP staff found that the proposed project would result in "no take" of endangered or threatened species. Also, because the proposed development leaves large areas of existing vegetation intact and that there is little vegetation on the site of the proposed asphalt plant, ***the Board found that this criterion is met.***

- E. ***Finished Grade.*** *Finished grades should be limited to no greater than a 3:1 slope, while preserving, matching, or blending with the natural contours and undulations of the land to the greatest extent possible.*

As conditioned, the site development (including the emergency access road) shall not have slopes that exceed 3:1; ***the Board found that this criterion is met.***

- F. ***Topsoil.*** *A minimum of 6" of topsoil shall be placed on all disturbed surfaces which are proposed to be planted.*

Because the site plans indicated that areas shown as lawn will be seeded with 6" of top soil, ***the Board found that this criterion is met***

6. ***Pedestrian and Vehicular Access; Traffic Management***

- A. ***Access.*** *To the extent feasible, access to nonresidential uses and structures shall be provided via one of the following (i) Access via a common driveway serving adjacent lots or premises; (ii) Access via an existing side street; (iii) Access via a cul-de-sac or loop road shared by adjacent lots or premises;*

Access to the nonresidential uses on this site is via Commerce Way, a private driveway off of Groton Road (Route 40) which is shown on the site plans as a 22 foot wide paved private road. The applicant also proposes improvements to the entrance area of Commerce Way and Groton Road, which will require action by the Conservation Commission.

The applicant shall also design and construct an emergency access road within an easement through the adjacent property that provides an alternate emergency access in case Commerce Way is blocked. There are several conditions of approval that relate to the Commerce Way access and to the emergency access (See Conditions # ___ - ___). ***As conditioned, the Board found that this criterion is met.***

1. *Access via roadways abutting residential districts shall be avoided where possible.*
The Board found that this criterion does not apply.

2. *Access and egress to a development with frontage on more than one street shall be in a manner that causes the least impact to the surrounding neighborhoods as determined by the Planning Board.*

The only access to a public way is the entrance of Commerce Way and Groton Road.
The Board found that this criterion does not apply.

3. *Access shall be obtained from existing driveways where such access is safe and efficient. Where two or more access ways now exist, the Planning Board may limit access to the more safe and efficient location.*

Access to the nonresidential uses on this site is via Commerce Way, a private driveway off of Groton Road (Route 40) which is shown on the site plans as a 22 foot wide paved private road. The applicant also proposes improvements to the entrance area of Commerce Way and Groton Road, which will require action by the Conservation Commission. There are several conditions of approval that relate to the Commerce Way access. (See Conditions # ___ - ___). ***As conditioned, the Board found that this criterion is met.***

- B. ***Curb Cuts.*** *Curb cuts shall be limited to the minimum width for safe entering and exiting, and shall in no case exceed 30 feet in width unless waived by the Planning Board for commercial truck traffic.*

No new curb cuts on a public way are proposed, as stated above, access to the nonresidential uses on this site is via Commerce Way, an existing private driveway off of Groton Road (Route 40) which is shown on the site plans as a 22 foot wide paved private road. The applicant also proposes improvements to the entrance area of Commerce Way and Groton Road, which will require action by the Conservation Commission. There are several conditions of approval that relate to the Commerce Way access. (See Conditions # ___ - ___). ***As conditioned, the Board found that this criterion is met.***

- C. ***Interior Circulation.*** *The proposed development shall ensure safe interior circulation within its site by accommodating and separating pedestrian, bike ways, and vehicular traffic and ensure safe access to all users of the buildings.*

Interior circulation related to the proposed facility is adequate to handle the proposed truck traffic and is contained within a fenced area with paved and gravel interior roadways. The applicant has not shown pedestrian or bicycle facilities on their plans, but the board found that such facilities were not necessary given that only 5 employees would be employed at the proposed asphalt plant. Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, ***the Board found that this criterion is met.***

- D. ***Transportation Plan Approval.*** *The proposed development shall be subject to a Transportation Plan approved by the Planning Board. The Transportation Plan shall be prepared by a qualified traffic consultant and consist of the following information:*

1. *A plan showing the proposed parking, loading, and traffic circulation within the site;*

access and egress points; and other features related to traffic generated by the proposed use.

2. *A Transportation Impact And Access Study (TIAS), detailing the expected traffic impacts. For proposed development in excess of 25,000 gross square feet or in excess of 20 peak hour vehicle trips, the required traffic study shall substantially conform to Town of Westford Guidelines for Preparation of a Transportation Impact Assessment and the Institute of Transportation Engineers' "Traffic Access and Impact Studies for Site Development: A Recommended Practice," latest edition¹. The Planning Board shall approve the geographic scope and content of the study. In addition, the applicant shall submit a Transportation Demand Management (TDM) plan tailored to the specific uses and the geographic location of the site.*
3. *Proposed mitigation measures, if any, such as left-turn lanes, roadway widening, signage, signalization of intersections.*

The applicant's site plans show the required elements such as parking loading and circulation. The applicant submitted a TIAS by Vanasse & Associates which was reviewed by MDM Transportation Consultants, the Town's peer reviewer. The Town's peer reviewer found that the TIAS was conducted conformed to industry standards and the Town's published TIA guidelines.

The primary feature of the TIA is not mitigation to make off site improvements, but it is the applicant's stipulation to limit trips to and from the asphalt facility to a daily maximum of 250. The Board found that the adjacent materials processing facility is also limited to 150 trips per day [by prior approval of the Board of Appeals] and that it was reasonable to limit to remainder of the site to 50 daily trips. Because the monitoring of such "self limitations" is **crucial** to ensuring for the Board that the impact to the community and to the transportation system, the Board established several conditions relating to monitoring (See Conditions 3a to 3i).

Furthermore, the Board found that the proposed condition requiring video monitoring of the entrance of Commerce Way at Groton Road means that ALL truck traffic must be monitored as there is no mechanism for distinguishing the truck trips related to the materials processing and truck trips related to the asphalt plant. Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, and *as conditioned, the Board found that this criterion is met.*

E. Level of Service Maintenance or Improvement.

The suggested Level of Service (LOS) of intersections impacted by the traffic generated the development shall be:

For newly constructed floor area, LOS "D" or better

1. *For all other projects subject to special permit- present LOS if present level of service is "D" or lower*

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where such suggested standard is not met, or where a proposed project will result in an increase of 10 seconds of delay to a signalized intersection, the PB may require the applicant to provide detailed plans (including reconstruction concepts) that when implemented would result in a intersection LOS as set forth above, or a return to existing conditions, whichever is applicable.

Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, ***the Board found that this criterion is met.***

- F. Dangerous Intersections.*** *The Planning Board may require safety improvements for any net increase in traffic volumes of 10% or more at an intersection that has an accident history of more than 5 accidents in the last three years for which data is available.*

Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, ***the Board found that this criterion does not apply.***

- G. Sight Distance.*** *Adequate sight distance shall be provided and maintained at all access locations, egress locations, and all intersections affected by the Development. At a minimum, these site distances shall meet the stricter of the Massachusetts Highway Department and American Association of State Highway Transportation Officials standards for safe-stopping sight distances as detailed in the Town of Westford Traffic and Pedestrian Safety Manual.*

Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, ***the Board found that this criterion is met.***

H. Pedestrian and Bicycle Safety.

- (1) All development and redevelopment shall provide for pedestrian and bicyclist connections on the property, and allow for possible future connections with adjoining properties, where deemed appropriate by the Planning Board.*
- (2) Pedestrian access shall connect to all building entrances with further connections to local pedestrian arteries.*
- (3) All road and intersection widening and new traffic signals or modification of existing traffic signals required as part of a Development or Redevelopment shall include appropriate bicycle and pedestrian accommodation.*
- (4) The Planning Board may require proposed development and redevelopment to provide sufficient rights-of-way on their properties to accommodate expected needs for bicycle and pedestrian use in conformance with the general guidelines in the Route 110 Master Plan, Sidewalk Master Plan, and other Master Plans as adopted by the Town.*
- (5) If the property abuts a public bikeway/ right-of-way, a paved access route to the bikeway may be required.*

The applicant did not request a waiver from these standards, but points out that there will be minimal pedestrian and bicycle traffic from the Facility or generated by the project uses (either employees or customers). While the applicant stated that they would construct a separate pedestrian facility for employees, the submitted Site Plans do not indicate a separate pedestrian facility, and therefore employees will use the Commerce Drive roadway to move from the asphalt plant and materials processing

facility to the restrooms located in the existing office building. Based on the limited number of employees and the lack of projected pedestrian and bicycle use by customers, **the Board found that these criteria do not apply.**

- H. **Location of Parking Areas.** *Where feasible, the Planning Board may require parking areas to be located to the side or behind buildings so as to provide an appropriate setting for the building within the context of the site and neighborhood.*

Due to the fact that the proposed facility is located 1,400 feet from the public way, **the Board found that this criterion does not apply.**

- I. **Traffic Calming Features.** *Traffic calming measures such as crosswalks, bike lanes, rumble strips and landscaped islands may be required.*

Due to the fact that the proposed facility is located 1,400 feet from the public way and that improvements are proposed for the entrance of Commerce Way and Groton Road, no further improvements are required, **the Board found that this criterion does not apply.**

7. **Community Character.**

- A. **Compatibility with Neighborhood.** *The location, size and design, building materials, and operating characteristics of the proposed development shall be compatible with abutting properties, natural and built environment in the area and the surrounding neighborhood, with consideration to be given to the following:*

1. *harmony in scale, bulk, massing, architectural character, building materials, placement and density;*
2. *generation of traffic and the capacity of surrounding streets;*
3. *consistency with the goals and objectives of the Town of Westford Master Plan and with any other applicable plan that has been adopted by the Town.*

The proposed facility is not visible to the surrounding area, or from the nearest public way (Groton Road). The proposed facility is within the Industrial A (IA) zoning district and is surrounded by other Industrially zoned land in Westford and Limited Industrial (IA) and Residential B (RB) in Chelmsford. The surrounding uses in Westford include a quarry, a processing facility for granite products, and a cement plant. In Chelmsford there are adjacent tractor trailer sales and light industrial uses that abut the site and residential dwellings along Groton Road in Chelmsford. The abutting property owner to the west submitted an affidavit that he has no objection to the proposal. Because the facility is not visible from the public way, **the Board found that the "harmony in scale, bulk, massing architectural character, building placement and density" criterion did not apply.**

As detailed above, and relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, and with extensive conditions relating to the limitation of trips to and from Commerce Way, **as conditioned the Board found that the criterion relating to "generation of traffic and capacity of surrounding streets" is met.**

The Board did not find that the proposed project was inconsistent with the 2009 Comprehensive Master Plan nor any other plan, **as conditioned the Board found that this**

criterion is met.

8. Utilities; Security; Emergency Systems

Projects may not overburden Town infrastructure services including water, gas, electricity and waste water systems. Building design may make use of water-conserving plumbing and minimize the amount of stormwater runoff through the use of best management practices for storm water management. Further, building may be designed to make use of natural and energy resources efficiently in construction, maintenance, and long term operation of the building, including supporting mechanical systems that reduce the need for mechanical equipment generally and its location on the roof specifically. Compliance with the Leadership in Energy and Environmental Design (LEED) certification standards and other evolving environmental efficiency standards shall be encouraged.

The applicant provided detailed information in the March 27, 2015 submittal regarding the adequacy of existing utilities to serve the proposed facility including sanitary wastewater facilities in the existing office building for the 5 employees, and an existing well, that will provide water to the two 30,000 gallon Fire Cisterns, a fire alarm system, an underground natural gas line and existing overhead electric power and telephone supply lines that will be supplied to the site. Stormwater is addressed in detail above and with numerous conditions including but not limited to __ to __). The site is secured by fencing and the applicant proposes fire alarms and training for the Westford Fire Department and provision of a Foam Cart on the site. The Board created several conditions relating to these life safety measures, see Conditions __ - __. ***As conditioned, the Board found that this criterion is met.***

9. Fiscal Analysis.

The proposed development should not place more demand on public services than it generates in tax revenue, or overburden the Town's utilities and infrastructure. The fiscal assessment will also consider how the proposed development would generate an additional need for, or affect the availability of affordable housing (and schools).

The applicant states that there will be an annual real estate tax benefit of \$20,000 to the Town and that the utilities are all private and will not require town services other than police and fire. The conditions of approval required by the Board provide that the applicant shall provide bonds and escrow funds to enable the Town to monitor the facility as required and also in case of environmental contamination from the Hazardous Materials being stored on the site. ***As conditioned, the Board found that this criterion is met.***

Special Permit Criteria (9.3.2)

1. Social, economic, or community needs which are served by the proposal;

The proposed asphalt plant will add to the Town's general fund by provided increased tax revenues and will provide at least 5 jobs for staff at the facility as well as support road construction jobs across the Commonwealth. The Board found _____. ***As conditioned, the Board found that this criterion is met.***

2. *Traffic flow and safety, including parking and loading;*
As detailed above, the application was reviewed by t by MDM Transportation Consultants, the Town's peer reviewer, for traffic flow, safety, parking and loading. Specific conditions of approval relating to limitations on the number of trips in and out of Commerce Way and other transportation related improvements are included in this decision. Similarly, the application was reviewed by the Town of Westford Engineering and Fire Departments with respect to internal site circulation to ensure the adequacy of the private driveway and emergency access for emergency vehicles. ***As conditioned, the Board found that this criterion is met.***
3. *Adequacy of utilities and other public services;*
The applicant provided detailed information in the March 27, 2015 submittal regarding the adequacy of existing utilities to serve the proposed facility including sanitary wastewater facilities in the existing office building for the 5 employees, and an existing well, that will provide water to the two 30,000 gallon Fire Cisterns, a fire alarm system, an underground natural gas line and existing overhead electric power and telephone supply lines that will be supplied to the site. Stormwater is addressed in detail above and with numerous conditions (See Conditions __ to __). ***As conditioned, the Board found that this criterion is met.***
4. *Neighborhood character and social structures;*
The proposed facility is only visible to the property on its western boundary, whose owner has stated no objection to the proposed project. The proposed facility is not visible from the nearest public way (Groton Road). The proposed facility is within the Industrial A (IA) zoning district and is surrounded by other Industrially zoned land in Westford and Limited Industrial (IA) and Residential B (RB) in Chelmsford. The surrounding uses in Westford include a quarry, a processing facility for granite products, and a cement plant. In Chelmsford there are adjacent tractor trailer sales and light industrial uses that abut the site and residential dwellings along Groton Road in Chelmsford. ***The Board found that the proposal as conditioned, meets this criterion.***
5. *Impacts on the natural environment; and*
The applicant provides adequate protection for the site's wetland resources. Proposed improvements to the entrance driveway will require application to the Conservation Commission for filling of wetland resource areas.

The proposed asphalt plant and materials processing facility received an Air Quality Permit from the Department of Environmental Protection 310 CMR 7.02 – Air Quality Non-Major Comprehensive Plan Application Transmittal No. X227251, Application No. MBR-09-IND-005, Modified Conditional Approval (DEP Permit). The DEP Board found that the proposed plant uses the Best Available Control Technology (BACT). The DEP Permit contains numerous conditions regarding limits on air pollutant emissions, limits on noise, monitoring and reporting, requirements. The Board's conditions of approval replicate these conditions should the DEP fail to enforce the conditions of approval and furthermore, the Board conditions the applicant to provide for escrow account to enable the Board to hire qualified professionals should such local enforcement be needed. See Conditions __ to ____.

The Board also conditions the applicant to provide a bond in case of environmental contamination from the 70,000 gallons of hazardous materials that are being stored on site. The Board found that the applicant provides adequate protection for fire and life safety related to the storage of hazardous materials. The Board notes in the conditions of approval

that the applicant shall obtain a Hazardous Materials permit from the Board of Health prior to operation of the plant. ***The Board found that the proposal as conditioned, meets this criterion.***

6. *Potential fiscal impact, including impact on town services, tax base, property values, and employment.*

The applicant states that there will be an annual real estate tax benefit of \$20,000 to the Town and that the utilities are all private and will not require town services other than police and fire. The conditions of approval required by the Board provide that the applicant shall provide bonds and escrow funds to enable the Town to monitor the facility as required and also in case of environmental contamination from the Hazardous Materials being stored on the site. ***As conditioned, the Board found that this criterion is met.***

CONDITIONS OF APPROVAL

1. Decisions – When are they Effective?

- a. Decisions to approve the petitions are not effective until the Board of Appeals grants relief for multiple principal uses on a site as required in the LC Decision.
- b. Decisions to approve the applications shall become null and void should applicable portions of the LC Decision be vacated on appeal.
- c. Decisions to approve the applications are null and void upon any violation of any of the conditions of approval.
- d. Special Permit decisions to approve are valid for a period of two (2) years from commencement of operations. Applicants may apply for extension of the approvals six months prior to expiration.

2. Operating Limitations

- a. Hours of operation limited to 6:00 a.m. to 6:00 p.m. Monday through Friday and 7:00 a.m. to 5:00 p.m. on Saturday, no Sunday operations for all uses on the site. [BOA 09002 SP condition] There shall be no night operations (i.e. no production or trucking operations between 6:00 p.m. and 6:00 a.m.).
- b. No operations of the asphalt plant and materials processing facility are allowed from December 15 to March 15. [DEP Permit]
- c. Average monthly production from the asphalt plant is limited to 1,500 tons of bituminous product per diem for the months the plant is operating. [VAI]
- d. Any new or expanded use of the site, including without limitation additional use of the 14,000 office building, shall require a modification of the SPR, and the MCP SP.
- e. Town staff may inspect the site with 24 hours notice to the property owner or, in the event of a documented complaint regarding noncompliance with any condition hereof, at any time during operation of the facility.

- f. Applicant shall provide an annual report to the Board or its designee on or about January 1 of each year. The report shall be certified by the Operator of the asphalt plant and the materials processing yard and shall include:
 - i. Quantity of asphalt produced per month;
 - ii. Quantity of materials brought into the site for processing per month;
 - iii. Quantity of RAP used by the asphalt plant per month;
 - iv. Quantity of crushed stone purchased from adjacent land owner (Fletcher Quarry) per month
 - v. Quantity of crushed stone purchased from other sources per month;
 - vi. Quantity of sand, liquid asphalt, number 2 fuel oil brought onto the site per month.

3. MCP – Traffic/Transportation

- a. Commercial truck access and egress from the site.
 - i. All commercial truck traffic entering Commerce Way from Groton Road shall enter westbound on Route 40 (Groton Road). No commercial trucks shall turn left from Groton Road into the site. [Derived from BOA 09002 SP condition of approval #1]. It shall be the applicants' responsibility to notify all users of the site of this restriction, and applicant shall be responsible for any violation hereof.
 - ii. Large trucks (more than four wheels) shall turn left when exiting the site (Commerce Way). Trucks with local destinations [*alternatively to the Towns of Westford, Chelmsford, ___*] (local paving contractors) that require right-turn egress will be managed by a color coded ticket procedures that allows for enforcement by Westford Police Department. *In such cases the site management shall provide the truck operator with a written certificate identifying the owner of the truck, the date and time and the destination of the delivery. Such certificate shall be in a form approved by the Chief of Police.* It shall be the applicants' responsibility to notify all users of the site of this restriction, and applicants shall be responsible for any violation hereof. [*Galvin*]
- b. Advance Advisory/Warning Signs. Applicant shall install advance warning signs along Groton Road following MUTCD guidance ("Trucks Entering Ahead") in combination with 35 mph speed advisory plaques to alert motorists of truck activity and to encourage slower travel speeds in the Site vicinity. [MDM and VAI]
- c. Daily Limitations (Not Averages) on Number of Trips [VAI/MDM/Staff]
 - i. 250 [244 – *Galvin*] trips per day allocated to asphalt plant
 - ii. 150 trips per day allocated to materials processing yard
 - iii. 50 trips per day allocated to remaining uses on the site.
 - iv. Total of 450 trips per day for the site.
- d. Emergency Access.
 - i. Prior to any site clearing the applicant shall provide the Board or its designee copies of emergency access easement documents and evidence that they have been recorded at the Middlesex North Registry of Deeds.

- ii. Prior to any site clearing the applicant shall demonstrate that the emergency access will accommodate emergency service vehicles (including but not limited to road construction detail, turning radii and road slope data).
- iii. Emergency access roads shall meet NFPA -1 and 527 CMR Chapter 18: [WFD]
 - (1) minimum access road widths shall be no less than twenty feet (20');
 - (2) permeable driving surfaces shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with an all-weather driving surface.
- e. Monitoring of trips. [VAI/MDM/Staff/Galvin]
 - i. Applicant shall develop a monitoring program and submit it for Board approval. Board's implementation of such monitoring program may require deposit of funds to the Board to ensure review and comment by Professional Traffic Engineers. Said monitoring program shall include recommendations of the Board's traffic consultant MDM Transportation Consultants' recommendations [MDM March 11, 2015 letter]:
 - (1) **Monthly submittal of certified summary of daily records** of time-stamped trip activity logs (including all truck activity, employee activity, delivery and visitor activity associated with the asphalt plant and materials processing yard).
 - (2) **Baseline Trip Survey.** Applicant shall establish an appropriate "baseline" survey of vehicle trip activity (by vehicle type) at Commerce Way, prior to commencement of operation of the Project, to reflect the range of peak hour and daily trips generated by existing established uses on the Site including the materials processing facility, retail granite product sales, solar farm, and office use. The survey period shall be representative of peak operating seasons for these uses (most likely summertime) and shall include counts over a multi- day period to include weekdays and Saturdays. The combination of existing uses should generate peak hour trip levels that are equal to or less than those assumed in the TIS; variation from these estimates would raise concern regarding traffic operations once the Project becomes operational and would require further evaluation by this Board as to whether to reopen the public hearing to consider imposition of further conditions. The survey will also facilitate measurement of actual trip increases at Commerce Way that are attributed to the Project following opening.
 - (3) **Driveway Traffic Counts.** Turning movement counts (TMCs) for the Commerce Way driveway shall be conducted following commencement of operation of the Project under peak season conditions over a multi-day period to include weekdays and Saturdays to validate projected Build traffic volume conditions used in the TIS. These TMCs would augment the vehicle activity logs maintained by the Applicant to validate peak driveway volumes, vehicle types and directional distribution of trips at Commerce Way under peak operating conditions.

The Board reserves the right to periodically monitor the 7AM to 9AM traffic operations at the intersection of Commerce Way and Groton Road. If such monitoring reveals evidence that there is condition at that intersection which presents a potential threat to the public safety, the applicant shall be required to pay for police details to regulate traffic at that intersection during the hours of operation that are of concern. This decision shall be made by the Board based on a review of operational experience at the intersection. [Galvin]

- (4) **Video Monitoring.** Applicant shall install and maintain video monitoring equipment on Commerce Way to augment trip activity logs and "peak season" TMC data, which would allow real-time checks of driveway operations, trip levels and patterns relative to log reports and the established "Build" condition traffic projections in the Applicant's TIS.

All traffic coming to this site originating from an offsite location other than the Fletcher Quarry for either the purpose of depositing supplies and material or for picking up product, shall enter the site through the Commerce Way entrance and no other. The applicant shall install a high definition CCTV camera with 180 day storage capability to monitor the ingress and egress of vehicles into the site from this entrance. All vehicles shall be provided with a distinctive number printed on fluorescent tape, visible from a distance of 20' which shall be placed at the top center of the trucks windshield. The applicant shall keep a register of all numbers issues to vehicles. The register shall identify the owners and the address of the vehicles and the purpose for using the plant. The Building Commissioner and the Chief of Police shall have access upon 24 hour request to review recordings from this camera for the purpose of verifying compliance with the trip limits specified in this approval. Deviations from the established limits shall be reported to the Board. Failure to comply with the established truck trip limits may result in a suspension or revocation of this special permit. [Galvin]

- f. Site entrance improvements [MDM]
- i. Applicant shall prepare engineering plans with specific lane dimensions, land striping and sign placement that conforms to MUTCD standards for approval by the Board or its designee. Said plans shall address the areas of encroachment illustrated by the VAI turn movement analysis.
 - ii. Applicant shall prepare engineering plans that show at least a 4 foot widening of Groton Road to increase the useable (paved) shoulder areas on the eastbound approach to the driveway to accommodate trucks turning left from the site driveway. If all necessary approvals for such widening are issued, applicant shall construct such widening at its expense.
- g. Operation of the asphalt plant and materials processing shall not result in stacking of trucks on Rte 40/Groton Road waiting to enter Commerce Way. The Westford Police shall take notice of any such condition and shall immediately report this condition to the Building Commissioner. If the condition cannot be alleviated, or if it develops into a persistent condition the Board shall take notice and may suspend or revoke this special permit. [Galvin]

- h. The applicant represented that a minimum of fifty percent (50%) of the aggregate used in asphalt production will be obtained from the adjacent Fletcher Quarry. This material shall be transported from the proposed internal quarry roads and shall not result in trucks traveling onto Groton Road.
- i. Applicant shall provide a barrier, such as large boulders, at the eastern property line to ensure no future use of the cut through to Doris Drive. Said barriers shall be visible on aerial photographs. Should the Town become aware of such "cut through" use of any other access/egress from the site other than Commerce Way, the Permit shall be null and void. [Hollister]

4. Environmental Protection

- a. The applicant shall copy the Planning Board and Board of Health on all correspondence, reports, filings, and/or surveys required by the *310 CMR 7.02 – Air Quality Non-Major Comprehensive Plan Application Transmittal No. X227251, Application No. MBR-09-IND-005, Modified Conditional Approval* (DEP Permit).
- b. Applicant shall post a bond or other financial security, in an amount established by the Board and in a form approved by Town Counsel, to cover the cost of a potential hazardous materials spill on the site. The security shall be renewed prior to any expiration of its term and will be released by the Board upon permanent closure of the facility and certification from DEP that the site does not contain hazardous materials. [Galvin]
- c. Applicant shall immediately report any violations of the DEP regulations or the DEP Permit to the Board or designee. Violations of DEP regulations and Permit may result in the suspension or revocation of the special permit. Opacity of emissions shall not exceed 20%. Emission rate shall not exceed 4.25lbs per hour with a limit of 3.4 tons in one 12 month period. [Galvin]
- d. The Applicant shall add additional odor control equipment to the loading operation that will help to eliminate any odors resulting from the loading of material into trucks. Additionally, odor control additives will be added to the processing operation that will eliminate the asphalt odor from the finished materials thus eliminating odor not only from the processing operation but also from the trucks transporting the material.

Applicant shall use odor control measures to reduce the affect of odor from this plant. Such actions shall be conducted with the approval of the Board of Health for the Town of Westford. Failure to effectively control odor may result in a suspension or revocation of the special permit. [Galvin]

- d. The applicant shall perform a monthly "visolite test" on the baghouse to ensure that there are no broken filters. The Building Commissioner shall be notified in writing within seven days of any failed tests and the action taken to correct the deficiency. Following notification of a failed visolite test, the Building Commissioner or his designee may conduct a visual inspection of the site to ensure that the baghouse is performing properly. [Galvin]
- e. The applicant shall immediately notify the Westford Building Commissioner of any incident in which operations may have caused an increase in emissions over the limits established by the DEP permit. [Galvin]

- f. Should the State Department of Environmental Protection (DEP) not adequately enforce the conditions of approval in *310 CMR 7.02 – Air Quality Non-Major Comprehensive Plan Application Transmittal No. X227251, Application No. MBR-09-IND-005, Modified Conditional Approval* (DEP Permit), the Planning Board hereby incorporates all the conditions of approval so that it has the independent right to enforce the requirements through its Zoning Enforcement Officer or other designee. When the Board's conditions are more limiting than the DEP permit, the more restrictive condition will be enforced by the Board. Applicant shall fund an escrow account to allow the board to hire professionals should they be needed to assist the Board to enforce the following conditions from the DEP Permit.
- i. Specific emission limits and pollution control devices for 4 different emission causing elements of the project (DEP page 6).
 - ii. 60,000 tons of asphalt per month/300,000 tons per 12 month period or 1,500 tons per day and not more than 250 vehicle trips per day, whichever is lesser.
 - iii. Newport Materials shall conduct a noise survey (during daytime operation), which is in accordance with MassDEP guidelines, to demonstrate the noise impacts from the operation of the equipment are in compliance with Regulations 310 CMR 7.10 and the Bureau of Waste Prevention's Noise Policy No. 90-001. This survey shall be conducted within 120 days of the commencement of continuous operation of the subject equipment. The results shall be submitted to the Planning Board within 20 days of completion of the testing. *If the results demonstrate non-compliance with 310 CMR 7.10, the Board shall take notice and may suspend or revoke this special permit.*
 - v. Requirements for testing of emissions with DEP personnel present 120 days after operational;
 - vi. Specific performance measures relating to air quality and monitoring of air quality.
 - vii. Specific equipment and operational procedures.

Note – the above list of DEP conditions is a summary only, to be supplemented with additional detail.

5. Fire and Life Safety and Hazardous Materials (note emergency access road conditions under Transportation)

- a. The two 30,000 gallon cisterns shall meet all requirements of NFPA-1142. As a condition of approval, a report documenting the sizing of the fire protection cistern should be prepared by a registered fire protection engineer and submitted to the Board. The fire chief should provide comments relative to the cistern and fire alarm system prior to the start of construction. [Westford Fire Department (WFD)/Woodard & Curran]
- b. WFD and its equipment shall be able to access each of the cisterns so that access road(s) are not blocked and so that other WFD vehicles can pass those vehicles accessing the cisterns. [WFD]
- c. The applicant shall provide the Foam Cart shown on the Site Plans throughout the lifetime of the plant's operation. The applicant shall maintain said Foam Cart in good working order

and ensure that it is fully supplied. The equipment shall be available for use by the WFD if needed. [WFD/RJA]

- d. Applicant shall provide (at no cost to the Town) OSHA's confined space training for the WFD staff on an annual basis and also provide for re-certification for WFD employees as needed over the lifetime of the asphalt plant's operation. [WFD]
- e. Asphalt Plant shall have an emergency shutdown mechanism and shut off valves from the fuel source to the burner that will shut down operation if there are any malfunctions of the burner, the exhaust fan damper or the baghouse. Should the emergency shutdown be triggered, the Fire Department shall be notified immediately and the Fire Chief or designee shall have the authority to investigate and inspect the site and shall be allowed to monitor the progress of repairs. [Galvin]
- f. Flammable Combustible Storage for the site shall meet the requirements at a minimum as specified in 527 CMR 9.03. [WFD]
 - i. In accordance with MGL c. 148 § 37, any above ground storage tank of more than 10,000 shall secure a permit from the State Fire Marshal and the local fire chief.
 - ii. Storage of flammable combustible liquids greater than 10,000 shall require a License from the local license authority.
 - iii. Manual shut off valves shall be installed at the #2 Fuel Oil tank and Liquid Asphalt tanks as recommended by the Town of Westford Fire Department within their memo dated October 13, 2009.
- g. On an annual basis, determined by the Fire Chief, the applicant shall provide a detailed briefing to representatives of the Fire Department designated by the Fire Chief with regard to spill containment procedures. The Fire Chief may conduct an inspection of the plant on an annual basis. As part of this inspection the Chief may ensure that all plant personnel understand procedures related to both hazmat containment control and fire suppression. [Galvin]
- h. Keys to the facility shall be placed in a "Knox Box" acceptable to Westford Public Safety personnel. [Galvin]
- i. The applicant shall install a sprinkler system in the furnace area, emergency lighting in all interior spaces, and clearly illuminated exit signs within interior spaces of the control room. [Galvin]
- j. Following any malfunction or abnormal condition with regard to emissions equipment, the applicant shall forward a written report to the Building Commissioner reporting such malfunction or abnormal condition, in a manner prescribed by the Commissioner within 15 days of the incident.
- k. For oil Spill Prevention, Control, and Countermeasure (SPCC) plans, any facility that has an oil storage capacity of 1,320 gallons or greater must prepare an SPCC plan. Since the capacity of the No. 2 fuel Oil storage tank is 10,000 gallons, a SPCC plan is required. A copy of the SPCC plan shall be provided to the Board and Town Engineer prior to commencement of the asphalt operations. [Woodard and Curran]

- l. Any breeches in emission controls, fuel storage and containment equipment or fire control issues shall be immediately reported to the Fire Chief and the Building Commissioner. [Galvin]
- m. All storage tanks must be rated at UL 142. Block valves on the containment structure shall be shut when the plant is not being operated. [Galvin]
- n. Applicant acknowledges that they must receive a Hazardous Materials permit from the Board of Health.
- o. Hazardous Materials Data sheets for all material stored at this site shall be provided to the Fire Chief and the Board of Health. An update to these information sheets shall be provided to the Fire Chief and Board of Health forthwith when materials are added to the site. [Galvin]
- p. Zones where dumping, storage or stockpiling of Hazardous Materials are prohibited shall be established on site subject to review by the Town Engineer and Board of Health. These zones must be clearly marked with posted signs plainly visible. [Galvin]
- q. The proposed asphalt facility shall incorporate all standard and optional controls and safety interlocks Gencor provides. [RJA]
- r. Prior to plant operations and/or occupancy permit the operating procedures, including emergencies (e.g. fire), maintenance program, and hot work procedures shall be developed for the Westford Asphalt Facility to address the safety procedures to avoid or minimize human errors through training and procedures. [RJA]
- s. Prior to plant operations (occupancy permit) a general Hazardous Operations (HAZOP) analysis shall be prepared for the site. These elements should be completed prior to the plant operations. [RJA]
- t. If the exhaust system for the conveyor belt, top of the silo and bottom of the silo, are not operational the manufacturing process shall stop until remedied. [RJA]

6. Sound

- a. No person shall operate or cause to be operated any source of sound in a manner that creates a sound level which exceeds 70dBA or 10dBA above ambient, whichever is lower when measured at the boundary of the receiving land use (except as necessary for tree cutting and other required construction activities).

ALTERNATIVELY, if waiver is granted

- a. No person shall operate or cause to be operated any source of sound in a manner that creates a sound level which exceeds 75dBA or 32dBA above ambient, whichever is lower when measured at the boundary of the receiving land use (except as necessary for tree cutting and other required construction activities).

- b. Applicant shall include the Board or its designee on the post operational sound analysis report and field testing. Applicant shall provide funding for the Board's peer reviewer to review said reports and field testing.

- c. Applicant shall modify plan details of the asphalt facility manufacturing elements to include the enclosures and mufflers around certain sound sources as detailed in the CTA report dated March 10, 2015. Applicant shall construct the sound attenuation barrier as specified by CTA and applications materials.

ALTERNATIVELY, if waiver is granted

- c. *Applicant shall modify plan details of the asphalt facility manufacturing elements to include the enclosures and mufflers around certain sound sources as detailed in the CTA report dated March 10, 2015, but is NOT required to construct the sound attenuation wall at the property line. The Board further conditions that the applicant shall construct said sound attenuation wall should the abutting property owner request such sound attenuation wall in writing to the Planning Board at any time over the lifetime of the asphalt plant operation.*

- d. Applicant shall revise the sound report and resubmit to the Board for review to include all rock crushers on the site so that the Board can determine the sound levels at all property lines. Applicant shall provide escrow funding for the Town's peer reviewer to examine the results of such sound modeling.
- e. Applicant shall annually conduct a sound survey at the five closest residential receptors (list property addresses). The survey shall measure ambient sound levels prior to commencement of operations for the day and shall measure sound levels after full operation of the plant commences for the day. Should sound levels exceed the predicted levels, the applicant shall cease operations until such time that adequate sound mitigation is provided to meet the Noise Standards of Section 9.3A.4.2. If sound levels are not adequately mitigated, the Board shall take notice and may suspend or revoke this special permit.

7. Rescinding Subdivision

Note – to be discussed at the hearing.

8. Stormwater Management

- a. Applicant shall introduce appropriate site measures to prevent sediment from being tracked into Groton Road and to provide the Board with details on those proposed measures. [Town Engineer]
- b. A draft maintenance agreement is required as part of the Stormwater Management Permit application. The agreement is required to comply with the maintenance requirements of the Stormwater Management Regulations including: Sections 6.H, 6.K and 12.0. The final maintenance agreement shall be submitted to the Town for review and approval prior to the completion of construction. The maintenance agreement shall be recorded at the Middlesex North Registry of Deeds once approved by the Town. [Town Engineer]
- c. As-built record drawings are required to be completed in accordance with Section 6.H of the Stormwater Management Regulations upon completion of the project. The Engineer of Record shall provide a written certification stating that the project was constructed in accordance with the approved design plans. [Town Engineer]
- d. The applicant shall comply with construction inspection requirements outlined in Section

11.0 and the continuing inspection and maintenance requirements in Section 12.0 of the Westford Stormwater Management Regulations. [Town Engineer]

- e. Applicant shall protect the infiltration basin and other structural stormwater Best Management Practices (BMPs) during construction in order to prevent a reduction in the long term infiltration capacity of the soil. All stormwater BMPs shall be cleaned of any silt and sediment once construction is complete and the project has been fully stabilized. This may require the removal and replacement of soil to make certain that the infiltration rate of the soil is met. [Town Engineer]
- f. The final stormwater operation and maintenance plan (O&M) shall be updated to include a simplified site plan that would highlight the location of the various structural pollutant controls and stormwater BMPs outlined in the O&M Plan. [Town Engineer]
- g. The applicant shall comply with the O&M in perpetuity and as outlined in the final maintenance agreement. [Town Engineer]
- h. Applicant shall demonstrate that post construction drainage areas closely match the drainage areas shown on the post-development drainage map submitted. [Town Engineer]
- i. The Stormwater Management Permit decision shall reference the SWPPP prepared for the project and require compliance with that SWPPP until the project is fully stabilized. Prior to commencement of any site clearing or construction activities, the applicant shall provide a copy of the final Stormwater Pollution Prevention Plan (SWPPP) to the Engineering Department. The SWPPP shall be received no later than the required pre-construction meeting. [Town Engineer]
- j. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, the Applicant shall inspect, clean and repair (if necessary) to the satisfaction of the Engineering Department the existing stormwater management system. [Town Engineer]
- k. The Applicant shall conduct soil testing within the footprint of each subsurface infiltration system and within the stilling basin prior to the start of construction and in the presence of the Engineering Department to verify proposed design assumptions and confirm compliance with the Stormwater Standards. [Town Engineer]
- l. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, the Design Engineer shall certify that the proposed subsurface infiltration system was installed in accordance with the manufacturer's specifications. [Town Engineer]
- m. The Applicant shall provide copies of the NPDES Construction General Permit to the Engineering Department no later than the required Preconstruction Meeting. Once the contractor is selected, the USEPA Notice of Intent (NOI) for construction activities regulated under the Construction General Permit and Stormwater Pollution Prevention Plan should be provided to the Town Engineer prior to the start of construction. [Town Engineer/Woodard & Curran]
- n. The Applicant shall provide a copy of the Long-Term Pollution Prevention Plan to the

Engineering Department no later than the required Preconstruction Meeting. [Town Engineer]

- o. The Applicant shall protect the subsurface infiltration systems and stilling basin during the construction process to prevent a reduction in the long term infiltration capacity of the soil. Once construction is complete, the Applicant shall clean these stormwater BMPs of any silt and sediment. At the discretion of the Engineering Department, this may require the removal and replacement of soil to make certain that the infiltration rate of the soil is met. [Town Engineer]
- p. The Applicant shall combine the Operation and Maintenance (O&M) Plan and Long-Term Pollution Prevention Plan into a bound letter-sized document that shall be provided to the Owner and Operator, and the Applicant shall comply with this document in perpetuity. This document shall also include a simplified site plan that highlights the location of the various structural pollutant controls and stormwater BMPs. This document shall apply to post-construction management of the site and shall be separate from the required SWPPP. [Town Engineer]
- q. The O&M Plan shall be recorded with the decision at the Northern Middlesex Registry of Deeds. Compliance with the O&M Plan shall be a condition of approval. [Woodard & Curran]
- r. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, the applicant shall have an as-built plan of the site and stormwater systems and provide an engineer's certification stating that the project was constructed in accordance with the approved design plans. The as-built plan shall conform to the specifications provided in section 218-25 of Westford's Subdivision Rules and Regulations and section 6.H of the Westford Stormwater Management Regulations upon completion of the project. [Town Engineer]
- s. An asphalt plant with a point source discharge to a navigable water body must submit a Notice of Intent (NOI) to the USEPA sixty days prior to discharge in accordance with Sector D (Asphalt Paving and Roofing Materials and Lubricant Manufacturers) of USEPA's Multi Sector General Permit for Industrial Activities (MSGP). Prior to submitting the NOI, the facility must prepare an industrial stormwater pollution prevention plan (SWPPP) that describes potential pollutant sources; structural and non-structural best management practices (BMPs); and other stormwater management procedures such as preventive maintenance, good housekeeping, pollution prevention team, spill prevention and response, training, monthly visual inspections, record-keeping, and reporting. This NOI shall be submitted as draft to the Town for review prior to submission to the USEPA. [Woodard & Curran]
- t. The applicant shall not be allowed to pave any additional areas on-site without prior SPR and MCP approvals from the Planning Board. [Woodard & Curran]

9. General conditions of approval

- a. Once the contractor is selected, a construction schedule shall be provided to the Building Commissioner for review. This schedule should be updated on a monthly basis and should address the implementation of erosion control measures during the course of construction. [Woodard & Curran]

- b. Any fill used in connection with this project shall be clean fill. Any fill shall contain no tree stumps, trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
- c. As used herein, the term "Applicant" shall mean the Applicant, its heirs, successors and assigns. The term "Board" as set forth herein shall mean the Westford Planning Board. The provision of this approval shall apply to and be binding upon the Applicant, its employees and all successors and assigns in interest or control.
- d. All work is to be done in accordance with the aforementioned record plans. Any changes, revisions or modifications to the plans as approved herein shall require approval by the Planning Board. Non-substantive changes, as determined by the Board, may be approved by the Board at a regularly scheduled public meeting. Substantive changes may be approved by the Board through a public hearing process.
- e. The applicant is reminded to contact the Building Commissioner to determine sign permitting requirements for proposed facilities.
- f. Prior to commencing any construction or site work, the applicant shall record this decision with the Middlesex North Registry of Deeds and shall provide evidence of such recording to the Planning Board.
- g. The Special Permits shall lapse after two (2) years from the grant hereof if a substantial use has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.
- h. All landscaping features, structures and areas shall be properly maintained. Dead shrubs or trees shall be replaced within one growing season.
- i. The Limits of Work, as shown on the approved plans, shall be staked out in the field by a Professional Land Surveyor. Orange construction fencing (or an approved equivalent) shall be installed at the Limits of Work. All trees within the Limits of Work that are to be retained during the construction process shall be properly flagged to avoid damage or removal during the construction process. Such flags shall be installed prior to any site clearing. The Limits of Work and erosion control measures shall be inspected and approved by the Town Planner prior to commencing any additional site work.
- j. Retaining walls over four (4) feet high shall be reviewed and stamped by a Structural Engineer.
- k. The Applicant acknowledges that this approval is subject to completion of all necessary filings and any order of conditions issued for this project by the Town of Westford Conservation Commission. In addition, if any of the approved site features are amended by the Conservation Commission in a way that would require an amendment, then the Applicant shall submit these changes to the Planning Board for their review and approval.
- l. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, all required legal documents including but not limited to covenants, easements,

agreements, monitoring agreements shall be submitted to the Town Planner and Town Counsel for review and approval. It shall be the responsibility of the Applicant to pay all legal cost associated with the review of this decision and documents associated with this decision.

- m. Any blasting activity at the site must conform to the requirements of the Town's Fire Department officials, the State Fire Marshall's Office and any other appropriate regulatory official. Additionally the Contractor shall be responsible for seismograph monitoring, notification to neighbors within the immediate work area prior to blasting and posting a fire detail on the site. If blasting is required for the construction of the site use the following steps will be taken to monitor/rectify any potential damage as a result of the blasting:
 - i. The Applicant shall provide documented inspections, i.e. videotaping, of any foundations and pools within 400' of any expected blast area prior to the start of any blasting;
 - ii. The Applicant shall provide pre and post blasting water testing for all residents within 400' of any expected blast area in the subject subdivision prior to the start of any blasting. Water quality, including radon testing, and a specific capacity/short term pumping test shall be included in this testing;
 - iii. The Applicant or their hired contractors, shall notify those residents within 400' of any expected blast area, when blasting will begin on the site and will again notify them when all blasting is complete;
 - iv. Blasting hours will be from 8:00 a.m. to 4:00 p.m., weekdays only;
 - v. The Applicant shall rectify those problems that are proven to be a result of blasting on the subject subdivision, i.e. foundation cracking and deterioration in water quality;
 - vi. The use of any perchlorate blasting material is prohibited;
 - vii. Hours of operations pertaining to air hammering or similar practices shall be limited to Weekdays between the hours of 8:00AM through 4:00PM.
- n. Within 60 days of the issuance of this decision and prior to commencement of plant operations and/or issuance of any building permits, the applicant shall provide the Permitting Department with the recordable Mylar plan set (sheets to be determined by Planning Staff), one (1) full Mylar plan set, five (5) sets of full sized and two (2) sets of reduced copies of the final *endorsed* plan set, an electronic copy of the *endorsed* plan set, as well as a digital copy of the final set of approved plans. Final plans shall be received no later than the required pre-construction meeting. The digital copy of the final set of approved plans must follow the five requirements listed below:
 - i. All plans and specifications must be submitted on electronic media (CD or DVD_ROM using an IBM-PC or compatible file format). Acceptable file formats include: AutoCAD *.dwg, AutoCAD *.dxf, ArcView *.shp, or ArcGIS Geodatabase *.mdb. The files must be identical to the printed plan and contain all information included on the written plan.

- ii. All digital mapping data must be delivered in the Massachusetts State Plane Coordinate system with a horizontal datum of NAD83 and vertical datum of NGVD88.
- iii. Each feature type must be organized in the CAD or GIS data structure as a separate layer using logical layer names. For example, there must be separate CAD layers for buildings, roads, parcel lines, and wetlands. Having all these features in a single CAD layer or GIS file will not be accepted.
- iv. Documentation of the data format must be provided with a description of the CAD layers and list of the types of features placed in each layer. Submission of multiple files must also include a list of the files and their purpose.
- v. The data submitted must include documentation on the method used to gather the data, the name of the person(s) responsible for preparing the data, contact information, an estimation of the horizontal and vertical accuracy, and the date of data capture. All media shall be free from any and all defects and viruses, and labeled as to their contents.
- o. Any minor revisions to the design of any drainage control measures shall henceforth be subject to the approval of the Town Engineer and the Town Planner. Significant modifications will require review by the Planning Board in accordance with condition 10.d.
- p. Impervious areas associated with the development (such as building and pavement areas) shall not exceed those sizes used in the stormwater calculations and as shown on the plans unless reviewed and approved by the Town Engineer.
- q. Prior to the commencement of any construction or site work** the Applicant shall initiate a pre-construction meeting with the Engineering Department, Planning Department and other relevant Town Departments and Town Staff. All relevant contractors and subcontractors involved with site preparation/site construction activities shall attend this meeting. This approval with conditions shall be reviewed by all parties involved.

Planning Board members present and vote

Michael Green, Chair
Dennis Galvin, Vice Chair
Katherine Hollister
Matt Lewin
Darrin Wizst

Filed with the Town Clerk:

Assistant Town Clerk

Date

Appeal Period Ends:

(20 days from filing with Town Clerk)

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

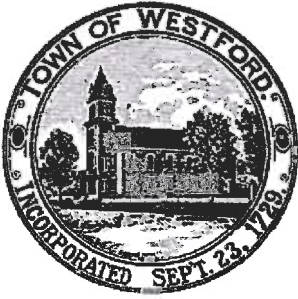
I hereby certify that this is a true copy of the decision rendered by the Planning Board and filed in the office of the Town Clerk on _____, ____; I further certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Westford, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Kaari Mai Tari
Town Clerk

cc: Attorney Douglas C. Deschenes for 540 Groton Road LLC, Newport Materials LLC, Planning Boards of Acton, Carlisle, Chelmsford, Groton, Littleton, Tyngsborough, Abutters within 300 feet; Town Engineer, Building Commissioner, Westford Fire Department, Zoning Board of Appeals, Board of Health



Planning Board
Town of Westford
55 Main Street
Westford, MA 01886

Record of Proceedings and Notice of Decision Application PB 1504 SPMCP

Applicant: Douglas C. Deschenes, Attorney
Property Owner: Richard DeFelice/540 Groton Road, LLC & Newport Materials, LLC
Property Location: 540 Groton Road, Westford, MA 01886
Zoning District: Industrial A (IA)
Assessors Map and Parcel: Map 048 Parcel 0011, Lots 0234, 0248 & 0249
Application Submitted: January 5, 2015
Public Hearing: January 21, February 12, March 2, March 16, April 6 & April 13, 2015
Planning Board Vote: Denied (X-X-X to approve, therefore a denial)

Filed with Assistant Town Clerk: _____

Appeal Period Ends: _____

(20 days after filed with Town Clerk)

DECISION

At a Special Meeting held on Monday April 13, 2015, the Planning Board (Board) voted **X-X-X** to **APPROVE** the Special Permit application of Attorney Douglas C. Deschenes for a Major Commercial Project for the addition of an Asphalt Manufacturing Facility at 540 Groton Road, thereby **DENYING** the petition for lack of attaining a supermajority (4 out of 5) vote.

BACKGROUND

1. In 2009 – 2010, the Planning Board considered applications from the Applicant to construct an asphalt manufacturing facility at 540 Groton Road. The Board held 21 hearings over the course of a year and in April 2010 denied the Site Plan Review and two Special Permit applications on the basis that the proposed plant did not qualify as a Light Manufacturing Use in accordance with the definition in the Zoning Bylaw (Section 10.2). That denial was appealed by the Applicant, and following 4 years of litigation at Land Court, including a 3-day trial in November 2013, a Decision was issued that sent the case back to the Planning Board.
2. Therefore, the current applications are being considered by the Planning Board on “remand” from Land Court in accordance with the Court’s decision for the case Newport Materials, et al v. Planning Board of Westford, et al. 10 MISC 429867 (Decision). In that Decision, Judge Sands directed that “... the Board’s assessment of any such resubmitted plans shall be made in accordance with the findings and rulings contained in this decision.” (Sands, page 32). Therefore, the December 8, 2014 Court Decision and the subsequent January 6, 2015 Order and the transcript of the January 6, 2015 hearing are incorporated into the Planning Board’s record.
3. Under the Land Court Decision (LC Decision), the Applicant was directed to resubmit applications for Site Plan Review (SPR), Special Permit for Major Commercial Project (SP MCP) and Special Permit for Water Resource Protection Overlay District (SP WRPOD). In

addition, the applicants filed for a Stormwater Management Permit (SWM) under General Bylaw 147 and the Planning Board's Rules and Regulations. The Applicant also filed an application for a Special Permit under section 9.3 of the Zoning Bylaw. On January 16, 2015, the applicant requested withdrawal of the Special Permit submitted to the Planning Board under section 9.3.

4. As directed by the Court, the Applicant submitted a Variance application to the Board of Appeals for multiple principal uses on one site. The Applicant submitted a Special Permit application to the Board of Appeals for extension of non-conforming use under Section 3.6.2 of the Zoning Bylaw. The Applicant also filed an application for a Special Permit under Section 9.3 of the Zoning Bylaw to the Board of Appeals. On January 16, 2015, the Applicant requested withdrawal of the Special Permit application submitted to the Board of Appeals under Section 9.3. On January 16, 2015, the Applicant submitted a request for a Variance from the term "quiet" in the definition of Light Manufacturing, so that they might exceed the noise criteria in Section 9.3A, which sets a maximum withdrew the Special Permit under Section 9.3 from the Board of Appeals consideration.
5. In accordance with the LC Decision, the Applicant must obtain a MCP SP, even if they obtain a Special Permit from the Board of Appeals to extend a non-conforming use and/or a Use Variance(s). Staff recommends to the Board that they require the Applicant to provide detailed information relating to all the uses on the site as part of the Board's review process.
6. In April of 2011, the Department of Environmental Protection (DEP) issued a Modified Clean Air Permit. The modified DEP permit was the result of a settlement between the Applicant and 47 Chelmsford residents. The DEP permit sets specific conditions including but not limited to:
 - a. Specific emission limits and pollution control devices for 4 different emission causing elements of the project (DEP page 6)
 - b. 60,000 tons of asphalt per month/300,000 tons per 12 month period
 - c. Operational hours of 6:00 a.m. to 7:00 p.m. Monday through Saturday, and not between December 15 and March 15.
 - d. Requirements for noise studies after the plant is operational;
 - e. Requirements for testing of emissions with DEP personnel present 120 days after operational;
 - f. Specific performance measures relating to air quality and monitoring of air quality; and
 - g. Specific equipment and operational procedures.
7. The LC Decision directed the applicants to resubmit a site plan application that addressed four factors, which are:
 - a. Incorporate sound attenuation barriers as recommended by the applicant's acoustical expert;
 - b. Provide that there will be five or more employees at the project;
 - c. Request a variance to operate more than one principal use on the site; and
 - d. Address the issue of the project's power source(s) and show the Board that the power source is only electric or is another power source that is "substantially noiseless and inoffensive".
8. The LC Decision states that if the applicant submits such revised application, then *"it would appear to this court that the Project would then be permitted as of right as a light manufacturing use at Locus, subject to such conditions as the Board may reasonably require in order to approve Newport's special permit applications."* The Board has discretion to review the SP MCP and the SP WRPOD as allowed by state land use law and the Judge made clear in a

hearing on January 6, 2015, that the Court was not ordering the Board to approve these Special Permits.

9. The Board of Appeals is NOT under the court's jurisdiction for the pending applications for Variance and Special Permits.

PROJECT SUMMARY

1. On January 5, 2015, the applicant submitted applications for a Site Plan Review, a Special Permit (WRPOD), a Special Permit for a Major Commercial Permit (MCP) and a Stormwater Management Permit and a Special Permit under Section 9.3 of the Zoning Bylaw for multiple uses. The applications included a narrative, a site plan, and technical information relating to the project.
2. Upon receipt of the application, the first public hearing on the proposal was noticed in the Lowell Sun on January 7, 2015 and January 14, 2015. On January 9, 2015, notices were sent to abutting property owners within 300 feet of the subject site, which included both Chelmsford and Westford Residents.
3. On January 21, 2015, prior to the opening of any public hearings, the applicant withdrew the application for Special Permit under Section 9.3 of the Zoning Bylaw. The Planning Board opened a concurrent public hearing for the two Special Permits, Site Plan Review and Stormwater Management Permit on January 21, 2015.
4. The applicant seeks to construct an asphalt manufacturing facility which is accompanied by an existing materials processing yard and two rock crushers. These facilities are located on approximately 4 acres in the middle of a 115 acre site (approximately 92 acres located in Westford, 23 acres in Chelmsford). The subject site consists of three tax parcels, all owned by the Applicant. Twenty-two (22) acres are developed with a solar array which is leased by the applicant to Nexamp/Carthartes Investments.
5. The site is accessed from Groton Road by a private way (Commerce Way) which is proposed to be developed as a 22-foot wide paved road. The applicant's plans show the location of a 20-foot emergency access way through an adjacent property (Fletcher Quarry) and onto Groton Road. No easement documents for the emergency access road were provided during the public hearings.
6. The proposed asphalt manufacturing facility (asphalt plant) consists of the following components which are on "skids" which sit on top of concrete base (according to information submitted with the application):
 - a. 12' x 36' Operator Control Center on skids;
 - b. Six 10' x 14' Cold Feed Bins with a loading ramp from the materials yard;
 - c. Conveyor belts between the bins, vibrating screener and the processing unit (Gencor 400);
 - d. 5' x 14' Vibrating screen between the bins and the Gencor 400;
 - e. One proposed and "Future" 10' x 15' Recycled Asphalt Product (RAP) bin adjacent to RAP stockpile and ramp in materials processing yard;
 - f. Gencor 400, a machine that receives the ingredients from conveyor belts, which is controlled remotely and mixes the products together;
 - g. An 86' conveyor belt that takes the mixed product from the Gencor 400 to the silos;
 - h. Four (4) 200-ton silos (68' in height) and two (2) FUTURE silos that allow the hot asphalt to load into trucks that pull underneath where materials load into the trucks from the top;

- i. Tank Farm with two 30,000 gallon indirect fired Asphalt Cement (AC) vertical tanks with unloading pumps (36 feet in height);
 - j. HYCGO Gencor 100 hot oil heater with expansion tank stand;
 - k. Lawn area, landscaping;
 - l. 3 parking spaces, one handicapped space with ramps and sidewalk with curbing;
 - m. Security fence with four entrance/exit gates;
 - n. Two truck scales near the silos;
 - o. One water well with a water line into the control booth;
 - p. Proposed utilities – natural gas line to provide fuel for the burners in the Gencor 400;
 - q. Site lighting with 20' fixtures around the asphalt manufacturing facility;
 - r. Dumpster;
 - s. Two 31,000 gallon fire cisterns;
 - t. Ground mounted signs including visitor, truck and directional signs;
 - u. Stormwater management facilities such as water quality swales; and
 - v. A 10,000 gallon aboveground storage tank for Number 2 fuel oil [unclear on plans, but indicated in the application].
7. Materials processing area as shown on the site plan AND confirmed during site visit.
 - a. Recycled Asphalt Product (RAP) stockpiles with a "Radial Stacker";
 - b. Crushing plant which includes two rock crushing machines;
 - c. Entrance driveway and internal gravel driveway;
 - d. Loading ramps and numerous stockpile areas, some for the proposed asphalt operation and some for the existing operation of which are recycled Brick and Concrete;
 - e. Office and storage trailers (no parking area identified on plans).
8. The Planning Board had the benefit of two peer reviewers for the proposed project, James Barnes of Acentech, a sound expert, and Robert Michaud of MDM, a Professional Traffic Engineer.
9. The Planning Board considered the application in accordance with Sections 8.1, 9.3A, 9.4 of the Westford Zoning Bylaw and General Bylaw 147 and the Stormwater Rules and Regulations over the course of six public hearings, as listed above. At said hearings, an opportunity was given to all those interested to be heard in favor or opposition to said petition. On April 13, 2015, the Board voted to close the public hearing.
10. The written record contains additional materials including, but not limited to the following information. The entire written record is made part of this record of decision.
 - a. Application materials;
 - b. Plan entitled "SITE PLAN ASPHALT MANUFACTURING FACILITY 540 GROTON ROAD (ROUTE 40) WESTFORD MASSACHUSETTS" prepared by LandTech Consultants Inc. dated April 6, 2009, with latest revision date of March 26, 2015 and containing the following sheets:
 - 1) Title Sheet
 - 2) Existing Conditions Plan
 - 3) Existing Conditions Plan
 - 4) Overall Site Plan
 - 5) Site Plan
 - 6) Construction Plan
 - 7) Construction Plan
 - 8) Construction Plan
 - 9) Site Utilities and Lighting Plan
 - 10) Erosion Control Plan

- 11) Erosion Control Plan
 - 12) Details and Sections
 - 13) Details and Sections
 - 14) Details and Sections
 - 15) Storm Water Pollution Prevention Plan (SWPP)
 - 16) Pre-Development Drainage Map
 - 17) Post Development Drainage Map
 - 18) Proposed Plant Layout (by others)
 - 19) General Component Elevations (by others)
 - 20) Tank Farm – Plan and Side Elevations (by others)
 - 21) Emergency Access Easement Plan, dated [REDACTED]
 - 22) Entrance Modification Plan Last revised 4/9/15
- c. Supplemental Data Report entitled “Asphalt Manufacturing Facility 540 Groton Road Westford, MA” prepared by LandTech Consultants, Inc. dated April 6, 2009.
 - d. “Appendix G Stormwater Report “Asphalt Manufacturing Facility 540 Groton Road Westford, MA” prepared by LandTech Consultants, Inc., dated April 9, 2009, last revised October 27, 2009 30, 2014.
 - e. “Acoustical Evaluation and Revised Acoustical Evaluation” prepared by Cavanaugh Tocci Associates (CTA) dated January 2, 2015 and March 10, 2015.
 - f. “Traffic Impact Analysis, Proposed Bituminous Concrete Manufacturing Facility, Westford MA” prepared by Vanasse & Associates, Inc., dated February 20, 2015.
 - g. Over 60 comments from the public and Town staff and boards.

FRAMEWORK OF DECISION

1. Land Court Remand
 - a. The Planning Board (Board) considered the application for a **MCP Special Permit** under remand from Land Court Decision issued on December 8, 2014, *10 MISC 429867 (AHS) – Newport Materials, LLC and 540 Groton Road, LLC, Plaintiffs, vs. Planning Board of the Town of Westford and the Town of Westford, Defendants*, (LC Decision).
 - b. Should the Board issue approvals for the requested permits, such approval is based upon the requirements and holdings of the LC Decision. The Planning Board has not yet had the opportunity to appeal from the LC Decision, as final judgment has not entered in the litigation, and it does not relinquish its rights to appeal the LC Decision. Of particular note, but without limiting the foregoing, the Board notes that the LC Decision holds that the proposed use would constitute a Light Manufacturing use allowed (with an MCP Special Permit) in the IA Zoning District. The Planning Board does not concur with this holding but is obligated by the LC Decision to accept it for purposes of this Remand. If this holding is reversed on appeal, any relief granted hereunder would become null and void.
2. Major Commercial Project (MCP) Special Permit
 - a. Section 9.3A of the Zoning Bylaw and other relevant sections of the Bylaw, including, but not limited to, Section 3.1.2 sets forth the regulatory framework for the MCP.
 - b. An MCP is required **whenever one of the MCP criteria is triggered on a site**. For example, if a site has an existing 10,000 square foot building and the property owner wants to expand by another 10,000 square feet, this expansion requires an MCP because the total site would have 20,000 square feet, which exceeds the 15,000 square feet threshold, even though each segment of the project is under the 15,000 square foot threshold. In other words, the MCP

thresholds apply to a property as a whole, and the various uses of that site may not be segmented into smaller individual projects to avoid MCP review.

More specifically, for the subject application, the MCP is triggered because the asphalt plant at full production as allowed by the DEP permit, would generate well over 250 trips, while the applicant is willing to restrict the number of trips, nonetheless, the MCP is required (LC Decision p. __). The adjacent / integrated materials processing facility is permitted by a Special Permit issued by the Board of Appeals (BOA) in 2009, 2010 and 2011. That facility, on the same site as the proposed asphalt plant, is limited to "75 trucks per day" or 150 truck trips, which is currently monitored through submittal of truck logs to the Town by Newport Materials. As described below, the Board concluded that the trips from the materials processing facility should also be monitored with those from the asphalt plant and the Board also found that the proposed condition of video monitoring (see Condition __) must include both facilities because it IS NOT POSSIBLE to distinguish trucks entering Commerce Way delivering products to the materials processing yard to be distinguished from trucks entering to get asphalt being produced at the plant, and in fact, it is possible that these could be shared trips.

- c. Therefore, the Board considers the entirety of subject site (115 acres) as being subject to the MCP and the conditions thereof.
3. Materials processing is part of the proposed bituminous concrete manufacturing plant (asphalt plant).
- a. The materials processing facility, which recycles asphalt, brick and concrete, was approved as a USE by the Board of Appeals in 2009, and the RAP production portion of that use is an integral part of the proposed asphalt plant operations.
 - i. The Department of Environmental Protection Permit (DEP Permit) includes both the asphalt plant and the rock crushing and materials storage facility. The DEP to regulated these uses together, and it makes sense for the Board to do so as well.
 - ii. The site plan shows that the materials processing area and the asphalt plant are contained within a single fenced area and joined by internal driveways.
 - iii. There may be shared trips in which a truck delivering recycled asphalt for crushing at the materials processing facility may then be loaded with asphalt from the silos.
 - iv. The applicant has represented that up to 50% of the Recycled Asphalt Product (RAP) used for manufacturing of asphalt will be provided from the materials processing facility. The DEP permit allows up to 40% of the materials that make up the final bituminous concrete (asphalt) product to be composed of RAP. Given that the applicant has this material in hand at the materials processing facility, it is common sense to conclude that the applicant will use this supply in the production of asphalt.
 - v. Asphalt manufacturing components such as sand, fine sand, aggregate and RAP are shown on the site plan in the materials processing yard area.
 - vi. The asphalt plant is designed to operate with RAP, which is manufactured in the materials processing facility and also other ingredients for asphalt such as sand, fine sand, and aggregate are stored within the materials processing yard area.
 - vii. The materials processing facility exists without benefit of a Site Plan Review (SPR). The materials processing plant did not receive a Site Plan Review (SPR) approval in 2009 from the Planning Board. Section 9.4.1 of the Zoning Bylaw states that *"The following types of activities and uses are subject to site plan review by the Planning Board. 1. Construction, exterior alteration, exterior expansion of a nonresidential or multifamily*

structure or tower, or change in use..." Therefore SPR for the materials processing facility is required.

- b. As described above, the proposed asphalt plant, as proposed, is designed to operate with RAP which is being produced in the materials processing yard. The two uses are physically and procedurally tied together. Therefore both facilities shall be considered and conditioned as part of any approval of the MCP and SPR.

4. Zoning relief required by LC Decision.

The LC Decision, as clarified by the Court at a Hearing on January 6, 2015, requires a Variance for multiple uses on a site. Applicants submitted a petition for Variance to the Zoning Board of Appeals (BOA), which is still pending at this time. The BOA's hearing is scheduled to be re-opened in early May 2015. The issuance of any approvals/permits by the Planning Board does not obviate the applicant from securing the necessary Variance relief from the BOA.

FINDINGS - Special Permit Criteria for Major Commercial Project - Section 9.3A:

The Applicant **failed to convince a supermajority of the Board that the project satisfied the performance criteria for a Major Commercial Project.** In reaching the decision to deny, the opposing members based their decision, in whole or in part, on the following:

9.3A.4 Standards.

The following standards shall apply to applications for special permits for Major Commercial Projects or Major Retail Projects:

1. **Lighting.** (Refer to draft approval decision)
2. **Noise.**

A. Ambient Noise Level. No person shall operate or cause to be operated any source of sound in a manner that creates a sound level which exceeds 70 dBA or 10 dBA above ambient, whichever is lower, when measured at the property boundary of the receiving land use.

The Board found that there was insufficient information provided by the Applicant to demonstrate compliance with this criterion including, but not solely limited to, the following reasons:

1. The Applicant refused to provide critical noise information relating to the two (2) existing rock crushers on the lot. Therefore, the Board was without benefit of an accurate and thorough sound study, and lacked the requisite information so as to make an informed decision. The Applicant maintains that the only the proposed Asphalt Facility is before the Board for consideration; however, the Major Commercial Project applies to the totality of a site, and portions may not be segmented so as to avoid review.
2. Although the Applicant provided sound information with respect to the proposed Asphalt Facility, there was no sound information provided about noise generated by the projected heavy truck traffic. There was extensive testimony from residents of the surrounding neighborhood that truck noise would be substantially detrimental to their quality of life. As perceived from abutting property boundaries, there was no information provided from the Applicant to demonstrate that sound associated with proposed routine heavy truck traffic would not exceed the permitted levels, either from within the subject property, or as trucks traveled along Groton Road (Route 40).

3. Respecting the Court's findings about the most important noise measurements at the westerly boundary, the Board found that the easterly boundary was at +9 dBA above ambient, and was not satisfied that the addition of noise from rock crushers would not cause noise levels at that easterly boundary to exceed the +10 dBA threshold.

3. **Landscaping.** (Refer to draft approval decision)
4. **Stormwater Management.** (Refer to draft approval decision)
5. **Site Development Standards.** (Refer to draft approval decision)
6. **Pedestrian and Vehicular Access; Traffic Management**
(Refer to draft approval decision)
7. **Community Character.**

A. **Compatibility with Neighborhood.** *The location, size and design, building materials, and operating characteristics of the proposed development shall be compatible with abutting properties, natural and built environment in the area and the surrounding neighborhood, with consideration to be given to the following:*

- (1) *harmony in scale, bulk, massing, architectural character, building materials, placement and density;* (Refer to draft approval decision)
- (2) *generation of traffic and the capacity of surrounding streets;* (Refer to draft approval decision)
- (3) *consistency with the goals and objectives of the Town of Westford Master Plan and with any other applicable plan that has been adopted by the Town.*
(Refer to draft approval decision)

Testimony was provided by the Applicant that the proposal would likely result in approximately thirty-seven (37) additional vehicle trips during the Weekday Morning Peak Hour (thirty-five (35) of which are anticipated to be large trucks), and twenty-five (25) additional vehicle trips during the Weekday Evening Peak Hour (twenty-three (23) of which are anticipated to be large trucks). Although the Applicant's traffic engineer testified that the proposal would not result in any significant impacts on motorist delays, the Board found that, relative to traffic, neighborhood character is defined by more than the mere operational status of a given roadway. Testimony was received from numerous residents concerned that the introduction of the additional, consistent truck traffic would result in a substantial detriment to the character of the neighborhood. It was noted that environmental studies to date relative to noise, odor and overall air quality focused on the proposed Facility itself, and did not account for the effects (noise associated with acceleration/deceleration of large trucks, odors and air pollutants associated with the cargo and/or exhaust from large trucks, additional **minor delays associated with trucks entering (inclined entrance ramp) or exiting nearby Route 3**, a perpetual spike in heavy truck traffic during early morning hours, etc.) as perceived by the neighborhood, particularly those neighboring properties containing dwellings. Neighbors also described existing dangerous truck movements into and out of the project site and the nearby entrance and exit ramps to Route 3, and expressed concern that this would be exacerbated by more than doubling the number of heavy truck trips accessing the site. Therefore, **X** members of the Board found that the Applicant failed to prove that the proposed Asphalt Manufacturing Facility would not adversely affect neighborhood character and social structure, and concluded that the

proposed use would not be compatible with the surrounding neighborhood due to heavy truck traffic.

8. ***Utilities; Security; Emergency Systems.*** (Refer to draft approval decision)

9. ***Fiscal Analysis.***

The Board found that there was insufficient information provided by the Applicant to demonstrate that the project would not have a negative impact on town services, tax base or property values. Although the Applicant testified that the project would result in increased property value for the subject property, there was no information provided by the Applicant as to the potential affect to neighboring property values. Testimony was received from abutters indicating that installation of similar facilities in other locations have resulted in decreased property values to neighboring properties. There was insufficient information provided by the Applicant to confirm that there would be no net decrease in neighborhood property values. For similar reasons, there was insufficient information provided by the Applicant to assure the Board that the tax base would not be adversely affected by the proposal. Per the Applicant, the proposed Facility will result in some additional demand on local services such as police, fire, roadways; however, there was insufficient information provided by the Applicant to demonstrate that the proposed Facility would not result in a net negative financial impact on town services. Furthermore, the Applicant rescinded prior offers of mitigation that would "offset impacts to the community of the proposed project." (*Deschenes, March 31, 2010*)

FINDINGS - Special Permit Criteria – Section 9.3:

The Applicant **failed to convince a supermajority of the Board that the project would not be substantially more detrimental to the neighborhood.** In reaching the decision to deny, the opposing members based their decision, in whole or in part, on the following:

1. *Social, economic, or community needs which are served by the proposal;*
(Refer to draft approval decision)
2. *Traffic flow and safety, including parking and loading;*
(Refer to draft approval decision)
3. *Adequacy of utilities and other public services;*
(Refer to draft approval decision)
4. *Neighborhood character and social structures;*

Testimony was provided by the Applicant that the proposal would likely result in approximately thirty-seven (37) additional vehicle trips during the Weekday Morning Peak Hour (thirty-five (35) of which are anticipated to be large trucks), and twenty-five (25) additional vehicle trips during the Weekday Evening Peak Hour (twenty-three (23) of which are anticipated to be large trucks). Although the Applicant's traffic engineer testified that the proposal would not result in any significant impacts on motorist delays, the Board found that, relative to traffic, neighborhood character is defined by more than the mere operational status of a given roadway. Testimony was received from numerous abutters concerned that the introduction of the additional, consistent truck traffic would result in a substantial detriment to the character of the neighborhood. It was noted that environmental studies to date relative to noise, odor and overall air quality focused on the proposed Facility itself, and did not account for the effects (noise associated with acceleration/deceleration of large trucks, odors and air pollutants associated with the cargo and/or exhaust from large trucks, additional **minor delays associated with trucks entering (inclined entrance ramp) or exiting nearby Route 3**, a perpetual spike in heavy truck traffic during early morning hours, etc.) as

perceived by the neighborhood, particularly those neighboring properties containing dwellings. Neighbors also described existing dangerous truck movements into and out of the project site and the nearby entrance and exit ramps to Route 3, and expressed concern that this would be exacerbated by more than doubling the number of heavy truck trips accessing the site. Therefore, ~~X~~ members of the Board found that the Applicant failed to prove that the proposed Asphalt Manufacturing Facility would not adversely affect neighborhood character and social structure.

5. *Impacts on the natural environment; and*
(Refer to draft approval decision)

6. *Potential fiscal impact, including impact on town services, tax base, property values, and employment.*

The Board found that there was insufficient information provided by the Applicant to demonstrate that the project would not have a negative impact on town services, tax base or property values. Although the Applicant testified that the project would result in increased property value for the subject property, there was no information provided by the Applicant as to the potential affect to neighboring property values. Testimony was received from abutters indicating that installation of similar facilities in other locations have resulted in decreased property values to neighboring properties. There was insufficient information provided by the Applicant to confirm that there would be no net decrease in neighborhood property values. For similar reasons, there was insufficient information provided by the Applicant to assure the Board that the tax base would not be adversely affected by the proposal. Per the Applicant, the proposed Facility will result in some additional demand on local services such as police, fire, roadways; however, there was insufficient information provided by the Applicant to demonstrate that the proposed Facility would not result in a net negative financial impact on town services.

Voted to ~~X-X-X~~ to **APPROVE**, thereby **DENYING** the petition:

Michael Green, Chair

Dennis Galvin, Vice Chair

Kate Hollister

Matt Lewin

Darrin Wizst

Any appeals of this Decision shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17, and a copy of the appeal shall be filed with the Town Clerk's office within twenty (20) days after the date of filing this decision in the office of the Town Clerk. Per Massachusetts General Laws, Chapter 40A, Section 11, this decision to deny the petition is effective upon filing with the Town Clerk.

cc: Town Clerk
Building Commissioner
Applicant
Abutters within 300 feet
Planning Boards of Acton, Carlisle, Chelmsford, Groton, Littleton, Tyngsborough
Westford Health Department
Westford Fire Department
Westford Police Department
Westford Board of Appeals



File Number: PB 1504 SPR
540 Groton Road also known as 10 Commerce Way -- Asphalt Plant

Planning Board
Town of Westford
55 Main Street
Westford, MA 01886
Tel: 978 692 5524
Fax: 978 399 2732

Notice of Decision

PB 1504 SPR
Site Plan Review
10 Commerce Way / 540 Groton Road

Applicant: Attorney Douglas C. Deschenes for 540 Groton Road LLC and Newport Materials, LLC

Property Location: 540 Groton Road also known as 10 Commerce Way, Westford, MA 01886

Zoning District: Industrial A (IA)

Assessors Map and Parcel: Map 048 Parcel 0011 Lots 0234, 247, 248 and 0250

Lot Size: 115.52 acres (approximately 4 acres designated for proposed asphalt plant and related materials processing and storage areas.)

Application Submitted: January 5, 2015

Public Hearing Dates: January 21, 2015
February 12, 2015
March 2, 2015
March 16, 2015
April 6, 2015
April 13, 2015

Planning Board Vote: April 13, 2015

Filed with Assistant Town Clerk: _____

Appeal Period Ends: _____ (20 days after filed with Town Clerk)

Available for Pick-up: _____

DECISION

At its meeting on **April 13, 2015**, the Planning Board voted ___-___ to **APPROVE** a **Site Plan Review** submitted under Section 9.4 of the Town of Westford Zoning Bylaw in response to the application for construction of an Asphalt Manufacturing Plant and Materials Processing Facility located at 10 Commerce Way, also known as 540 Groton Road. .

BACKGROUND

[See SP MCP Approval Decision]

PROJECT SUMMARY

[See SP MCP Approval Decision]

FRAMEWORK OF DECISION

[See SP MCP Approval Decision]

FINDINGS

Special Permit for Major Commercial Permit (9.3.A.4)

9.4.7 Site Plan Approvals

1. **General Review Standards.** *[Amended 5-7-2005 ATM Art. 17; 3-28-2011 ATM Art. 33] Site Plan approval for uses listed in 9.4.1 shall be granted upon determination by the Planning Board that the following conditions have been satisfied. The Planning Board may impose reasonable conditions, at the expense of the applicant, to ensure that the following conditions have been satisfied. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:*
 - a. *Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;*

There is a portion of the site near the entrance that is mapped on the Natural Heritage Endangered Species Program (NHESP) the NHESP staff found that the proposed project would result in "no take" of endangered or threatened species. The proposed development leaves large areas of existing vegetation intact and that there is little vegetation on the site of the proposed asphalt plant.

The site has a disturbed nature, and a majority of the proposed structures are on "skids" and that the new stormwater drainage will improve conditions on the site. The proposed project is subject to a Stormwater Management Permit from the Town in accordance with Planning Board Rules and Regulations. The Town's Engineering Department and 2009 peer reviewer found that the project's stormwater management provisions are adequate and suggested specific conditions relative to the Operation and Maintenance of all Stormwater facilities (See Conditions # ____-to ____). ***As conditioned, the Board found that this criterion is met.***

b. Maximize pedestrian and vehicular safety both on and offsite;

Access to the nonresidential uses on this site is via Commerce Way, a private driveway off of Groton Road (Route 40) which is shown on the site plans as a 22 foot wide paved private road. The applicant also proposes improvements to the entrance area of Commerce Way and Groton Road, which will require action by the Conservation Commission.

The applicant shall also design and construct an emergency access road within an easement through the adjacent property that provides an alternate emergency access in case Commerce Way is blocked. There are several conditions of approval that relate to the Commerce Way access and to the emergency access (See Conditions # ____ - ____). ***As conditioned, the Board found that this criterion is met.***

Interior circulation related to the proposed facility is adequate to handle the proposed truck traffic and is contained within a fenced area with paved and gravel interior roadways. The applicant has not shown pedestrian or bicycle facilities on their plans, but the board found that such facilities were not necessary given that only 5 employees would be employed at the proposed asphalt plant. Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer

The applicant's site plans show the required elements such as parking loading and circulation. The applicant submitted a TIAS by Vanasse & Associates which was reviewed by MDM Transportation Consultants, the Town's peer reviewer. The Town's peer reviewer found that the TIAS was conducted conformed to industry standards and the Town's published TIA guidelines.

The primary feature of the TIA is not mitigation to make off site improvements, but it is the applicant's stipulation to limit trips to and from the asphalt facility to a daily maximum of 250. The Board found that the adjacent materials processing facility is also limited to 150 trips per day [by prior approval of the Board of Appeals] and that it was reasonable to limit to remainder of the site to 50 daily trips. Because the monitoring of such "self limitations" is **crucial** to ensuring for the Board that the impact to the community and to the transportation system, the Board established several conditions relating to monitoring (See Conditions 3a to 3i).

Furthermore, the Board found that the proposed condition requiring video monitoring of the entrance of Commerce Way at Groton Road means that ALL truck traffic must be monitored as there is no mechanism for distinguishing the truck trips related to the materials processing and truck trips related to the asphalt plant. Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, and ***as conditioned, the Board found that this criterion is met.***

c. Minimize obstruction of scenic views from publicly accessible locations;

- d. *Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;*

The proposed facility is not visible to the surrounding area, or from the nearest public way (Groton Road). The proposed facility is within the Industrial A (IA) zoning district and is surrounded by other Industrially zoned land in Westford and Limited Industrial (IA) and Residential B (RB) in Chelmsford. The surrounding uses in Westford include a quarry, a processing facility for granite products, and a cement plant. In Chelmsford there are adjacent tractor trailer sales and light industrial uses that abut the site and residential dwellings along Groton Road in Chelmsford. The abutting property owner to the west submitted an affidavit that he has no objection to the proposal. ***As conditioned the Board found that this criterion is met.***

- e. *Minimize glare from headlights through plantings or other screening;*

The proposed facility is not visible to the surrounding area, or from the nearest public way (Groton Road). Headlights from vehicles entering and leaving the entrance at Commerce Way will not shine into residential property. ***The Board found that this criterion is met.***

- f. *Minimize lighting intrusion through use of such devices as cutoff luminaires confining direct rays to the site, with fixture mounting not higher than 20 feet;*

The Applicant shows "low sodium yard lights" on the site plan sheets and the lights are 20-foot high downward facing fixtures. While the applicant did not provide an illumination lighting plan showing illumination levels, the applicant states that the proposed project is located 1,400 feet from the public way (Groton Road) and 1,360 feet from the nearest residence. The location of the lighting within a large parcel plus the fact that there was no evidence presented to the contrary, nor did any abutter or Board member raise a concern about light trespass or the need for further attention to lighting. ***The Board found that this criterion is met.***

- g. *Minimize unreasonable departure from the character and scale of building in the vicinity, as viewed from public ways;*

The proposed facility is not visible to the surrounding area, or from the nearest public way (Groton Road). The proposed facility is within the Industrial A (IA) zoning district and is surrounded by other Industrially zoned land in Westford and Limited Industrial (IA) and Residential B (RB) in Chelmsford. The surrounding uses in Westford include a quarry, a processing facility for granite products, and a cement plant. In Chelmsford there are adjacent tractor trailer sales and light industrial uses that abut the site and residential dwellings along Groton Road in Chelmsford. The abutting property owner to the west submitted an affidavit that he has no objection to the proposal. Because the facility is not visible from the public way, ***the Board found that this criterion did not apply.***

- h. *Minimize contamination of groundwater from onsite wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances.*

The proposed development requires the WRPOD Special Permit because it will contain 10,000 gallons of No. 2 fuel Oil and two 30,000 gallon tanks of liquid asphalt in above ground tanks. Applicant provided information about the spill prevention related to the storage of Hazardous Materials. Furthermore, the DEP Permit contains conditions related to the storage, monitoring and reporting of hazardous materials.

The Westford Fire Department reviewed and commented on the proposal in 2009 -10 and referenced the 2009-10 peer review conducted by RJA. Conditions specified by the WFD have been incorporated into this decision.

The Board noted that the project requires a Hazardous Materials Permit from the Board of Health prior to plant operation and the Board provided numerous conditions related to the protection of groundwater, including but not limited to Conditions 4a, 4b, 4f, 5a, 5e-f, 5j-o, 5q-s.

The proposed asphalt plant and materials processing facility received an Air Quality Permit from the Department of Environmental Protection 310 CMR 7.02 – *Air Quality Non-Major Comprehensive Plan Application Transmittal No. X227251, Application No. MBR-09-IND-005, Modified Conditional Approval* (DEP Permit). The DEP Board found that the proposed plant uses the Best Available Control Technology (BACT). The DEP Permit contains numerous conditions regarding limits on air pollutant emissions, limits on noise, monitoring and reporting, requirements. The Board's conditions of approval replicate these conditions should the DEP fail to enforce the conditions of approval and furthermore, the Board conditions the applicant to provide for escrow account to enable the Board to hire qualified professionals should such local enforcement be needed. See Conditions ___ to ____.

The Board also conditions the applicant to provide a bond in case of environmental contamination from the 70,000 gallons of hazardous materials that are being stored on site. The Board found that the applicant provides adequate protection for fire and life safety related to the storage of hazardous materials. The Board notes in the conditions of approval that the applicant shall obtain a Hazardous Materials permit from the Board of Health prior to operation of the plant. ***The Board found that the proposal as conditioned, meets this criterion.***

- i. *Maintain an acceptable level of traffic service, volume and infrastructure which meets the goals of the Master Plan, the Traffic and Pedestrian Safety Manual, and Route 110 Master Plan, the Sidewalk Master Plan, and other Town adopted Master Plans.*

The applicant's site plans show the required elements such as parking loading and circulation. The applicant submitted a TIAS by Vanasse & Associates which was reviewed by MDM Transportation Consultants, the Town's peer reviewer. The Town's peer reviewer found that the TIAS was conducted conformed to industry standards and the Town's published TIA guidelines.

The primary feature of the TIA is not mitigation to make off site improvements, but it is the applicant's stipulation to limit trips to and from the asphalt facility to a daily maximum of 250. The Board found that the adjacent materials processing facility is also limited to 150 trips per day [by prior approval of the Board of Appeals] and that it was

reasonable to limit to remainder of the site to 50 daily trips. Because the monitoring of such "self limitations" is **crucial** to ensuring for the Board that the impact to the community and to the transportation system, the Board established several conditions relating to monitoring (See Conditions 3a to 3i).

Furthermore, the Board found that the proposed condition requiring video monitoring of the entrance of Commerce Way at Groton Road means that ALL truck traffic must be monitored as there is no mechanism for distinguishing the truck trips related to the materials processing and truck trips related to the asphalt plant. Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, and ***as conditioned, the Board found that this criterion is met.***

- j. *Encourage alternative methods of transporting people, through public transportation, car pools and van pools, bicycling and walking, rather than near exclusive reliance on single-occupant vehicles.*

There will be minimal pedestrian and bicycle traffic from the Facility or generated by the project uses (either employees or customers). While the applicant stated that they would construct a separate pedestrian facility for employees, the submitted Site Plans do not indicate a separate pedestrian facility, and therefore employees will use the Commerce Drive roadway to move from the asphalt plant and materials processing facility to the restrooms located in the existing office building. Based on the limited number of employees and the lack of projected pedestrian and bicycle use by customers, ***the Board found that this criterion does not apply.***

CONDITIONS OF APPROVAL

1. Decisions - When are they Effective?

- a. Decision to approve the Site Plan is not effective until the Board of Appeals grants relief for multiple principal uses on a site as required in the LC Decision and the Planning board grants Special Permits for Major Commercial Project, WRPOD and SWM.
- b. Decision to approve the application shall become null and void should applicable portions of the LC Decision be vacated on appeal or upon lapse of any of the Special Permits.
- c. Decision to approve this application is null and void upon any violation of any of the conditions of approval.

2. Operating Limitations

- a. Hours of operation limited to 6:00 a.m. to 6:00 p.m. Monday through Friday and 7:00 a.m. to 5:00 p.m. on Saturday, no Sunday operations for all uses on the site. [BOA 09002 SP condition] There shall be no night operations (i.e. no production or trucking operations between 6:00 p.m. and 6:00 a.m.).
- b. No operations of the asphalt plant and materials processing facility are allowed from December 15 to March 15. [DEP Permit]

- c. Average monthly production from the asphalt plant is limited to 1,500 tons of bituminous product per diem for the months the plant is operating. [VAI]
- d. Any new or expanded use of the site, including without limitation additional use of the 14,000 office building, shall require a modification of the SPR, and the MCP SP.
- e. Town staff may inspect the site with 24 hours notice to the property owner or, in the event of a documented complaint regarding noncompliance with any condition hereof, at any time during operation of the facility.
- f. Applicant shall provide an annual report to the Board or its designee on or about January 1 of each year. The report shall be certified by the Operator of the asphalt plant and the materials processing yard and shall include:
 - i. Quantity of asphalt produced per month;
 - ii. Quantity of materials brought into the site for processing per month;
 - iii. Quantity of RAP used by the asphalt plant per month;
 - iv. Quantity of crushed stone purchased from adjacent land owner (Fletcher Quarry) per month
 - v. Quantity of crushed stone purchased from other sources per month;
 - vi. Quantity of sand, liquid asphalt, number 2 fuel oil brought onto the site per month.

3. SPR Traffic/Transportation

- a. Commercial truck access and egress from the site.
 - i. All commercial truck traffic entering Commerce Way from Groton Road shall enter westbound on Route 40 (Groton Road). No commercial trucks shall turn left from Groton Road into the site. [Derived from BOA 09002 SP condition of approval #1]. It shall be the applicants' responsibility to notify all users of the site of this restriction, and applicant shall be responsible for any violation hereof.
 - ii. Large trucks (more than four wheels) shall turn left when exiting the site (Commerce Way). Trucks with local destinations [*alternatively to the Towns of Westford, Chelmsford, ____*] (local paving contractors) that require right-turn egress will be managed by a color coded ticket procedures that allows for enforcement by Westford Police Department. *In such cases the site management shall provide the truck operator with a written certificate identifying the owner of the truck, the date and time and the destination of the delivery. Such certificate shall be in a form approved by the Chief of Police.* It shall be the applicants' responsibility to notify all users of the site of this restriction, and applicants shall be responsible for any violation hereof. [*Galvin*]
- b. Advance Advisory/Warning Signs. Applicant shall install advance warning signs along Groton Road following MUTCD guidance ("Trucks Entering Ahead") in combination with 35 mph speed advisory plaques to alert motorists of truck activity and to encourage slower travel speeds in the Site vicinity. [MDM and VAI]
- c. Daily Limitations (Not Averages) on Number of Trips [VAI/MDM/Staff]
 - i. 250 [244 – *Galvin*] trips per day allocated to asphalt plant
 - ii. 150 trips per day allocated to materials processing yard

- iii. 50 trips per day allocated to remaining uses on the site.
- iv. Total of 450 trips per day for the site.
- d. Emergency Access.
 - i. Prior to any site clearing the applicant shall provide the Board or its designee copies of emergency access easement documents and evidence that they have been recorded at the Middlesex North Registry of Deeds.
 - ii. Prior to any site clearing the applicant shall demonstrate that the emergency access will accommodate emergency service vehicles (including but not limited to road construction detail, turning radii and road slope data).
 - iii. Emergency access roads shall meet NFPA -1 and 527 CMR Chapter 18: [WFD]
 - (1) minimum access road widths shall be no less than twenty feet (20');
 - (2) permeable driving surfaces shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with an all-weather driving surface.
- e. Monitoring of trips. [VAI/MDM/Staff/Galvin]
 - i. Applicant shall develop a monitoring program and submit it for Board approval. Board's implementation of such monitoring program may require deposit of funds to the Board to ensure review and comment by Professional Traffic Engineers. Said monitoring program shall include recommendations of the Board's traffic consultant MDM Transportation Consultants' recommendations [MDM March 11, 2015 letter]:
 - (1) **Monthly submittal of certified summary of daily records** of time-stamped trip activity logs (including all truck activity, employee activity, delivery and visitor activity associated with the asphalt plant and materials processing yard).
 - (2) **Baseline Trip Survey.** Applicant shall establish an appropriate "baseline" survey of vehicle trip activity (by vehicle type) at Commerce Way, prior to commencement of operation of the Project, to reflect the range of peak hour and daily trips generated by existing established uses on the Site including the materials processing facility, retail granite product sales, solar farm, and office use. The survey period shall be representative of peak operating seasons for these uses (most likely summertime) and shall include counts over a multi- day period to include weekdays and Saturdays. The combination of existing uses should generate peak hour trip levels that are equal to or less than those assumed in the TIS; variation from these estimates would raise concern regarding traffic operations once the Project becomes operational and would require further evaluation by this Board as to whether to reopen the public hearing to consider imposition of further conditions. The survey will also facilitate measurement of actual trip increases at Commerce Way that are attributed to the Project following opening.

- (3) **Driveway Traffic Counts.** Turning movement counts (TMCs) for the Commerce Way driveway shall be conducted following commencement of operation of the Project under peak season conditions over a multi-day period to include weekdays and Saturdays to validate projected Build traffic volume conditions used in the TIS. These TMCs would augment the vehicle activity logs maintained by the Applicant to validate peak driveway volumes, vehicle types and directional distribution of trips at Commerce Way under peak operating conditions.

The Board reserves the right to periodically monitor the 7AM to 9AM traffic operations at the intersection of Commerce Way and Groton Road. If such monitoring reveals evidence that there is condition at that intersection which presents a potential threat to the public safety, the applicant shall be required to pay for police details to regulate traffic at that intersection during the hours of operation that are of concern. This decision shall be made by the Board based on a review of operational experience at the intersection. [Galvin]

- (4) **Video Monitoring.** Applicant shall install and maintain video monitoring equipment on Commerce Way to augment trip activity logs and "peak season" TMC data, which would allow real-time checks of driveway operations, trip levels and patterns relative to log reports and the established "Build" condition traffic projections in the Applicant's TIS.

All traffic coming to this site originating from an off site location other than the Fletcher Quarry for either the purpose of depositing supplies and material or for picking up product, shall enter the site through the Commerce Way entrance and no other. The applicant shall install a high definition CCTV camera with 180 day storage capability to monitor the ingress and egress of vehicles into the site from this entrance. All vehicles shall be provided with a distinctive number printed on fluorescent tape, visible from a distance of 20' which shall be placed at the top center of the trucks windshield. The applicant shall keep a register of all numbers issues to vehicles. The register shall identify the owners and the address of the vehicles and the purpose for using the plant. The Building Commissioner and the Chief of Police shall have access upon 24 hour request to review recordings from this camera for the purpose of verifying compliance with the trip limits specified in this approval. Deviations from the established limits shall be reported to the Board. Failure to comply with the established truck trip limits may result in a suspension or revocation of this special permit. [Galvin]

- f. Site entrance improvements [MDM]
- i. Applicant shall prepare engineering plans with specific lane dimensions, land striping and sign placement that conforms to MUTCD standards for approval by the Board or its designee. Said plans shall address the areas of encroachment illustrated by the VAI turn movement analysis.
 - ii. Applicant shall prepare engineering plans that show at least a 4 foot widening of Groton Road to increase the useable (paved) shoulder areas on the eastbound approach to the driveway to accommodate trucks turning left from the site

driveway. If all necessary approvals for such widening are issued, applicant shall construct such widening at its own expense.

- g. Operation of the asphalt plant and materials processing shall not result in stacking of trucks on Rte 40/Groton Road waiting to enter Commerce Way. The Westford Police shall take notice of any such condition and shall immediately report this condition to the Building Commissioner. If the condition cannot be alleviated, or if it develops into a persistent condition the Board shall take notice and may suspend or revoke this special permit. [Galvin]
- h. The applicant represented that a minimum of fifty percent (50%) of the aggregate used in asphalt production will be obtained from the adjacent Fletcher Quarry. This material shall be transported from the proposed internal quarry roads and shall not result in trucks traveling onto Groton Road.
- i. Applicant shall provide a barrier, such as large boulders, at the eastern property line to ensure no future use of the cut through to Doris Drive. Said barriers shall be visible on aerial photographs. Should the Town become aware of such "cut through" use of any other access/egress from the site other than Commerce Way, the Permit shall be null and void. [Hollister]

4. Environmental Protection

- a. The applicant shall copy the Planning Board and Board of Health on all correspondence, reports, filings, and/or surveys required by the *310 CMR 7.02 – Air Quality Non-Major Comprehensive Plan Application Transmittal No. X227251, Application No. MBR-09-IND-005, Modified Conditional Approval* (DEP Permit).
- b. Applicant shall post a bond or other financial security, in an amount established by the Board and in a form approved by Town Counsel, to cover the cost of a potential hazardous materials spill on the site. The security shall be renewed prior to any expiration of its term and will be released by the Board upon permanent closure of the facility and certification from DEP that the site does not contain hazardous materials. [Galvin]
- c. Applicant shall immediately report any violations of the DEP regulations or the DEP Permit to the Board or designee. Violations of DEP regulations and Permit may result in the suspension or revocation of the special permit. Opacity of emissions shall not exceed 20%. Emission rate shall not exceed 4.25lbs per hour with a limit of 3.4 tons in one 12 month period. [Galvin]
- d. The Applicant shall add additional odor control equipment to the loading operation that will help to eliminate any odors resulting from the loading of material into trucks. Additionally, odor control additives will be added to the processing operation that will eliminate the asphalt odor from the finished materials thus eliminating odor not only from the processing operation but also from the trucks transporting the material.

Applicant shall use odor control measures to reduce the affect of odor from this plant. Such actions shall be conducted with the approval of the Board of Health for the Town of Westford. Failure to effectively control odor may result in a suspension or revocation of the special permit. [Galvin]

- d. The applicant shall perform a monthly "visolite test" on the baghouse to ensure that there are no broken filters. The Building Commissioner shall be notified in writing within seven days of any failed tests and the action taken to correct the deficiency. Following notification of a failed visolite test, the Building Commissioner or his designee may conduct a visual inspection of the site to ensure that the baghouse is performing properly. [Galvin]
- e. The applicant shall immediately notify the Westford Building Commissioner of any incident in which operations may have caused an increase in emissions over the limits established by the DEP permit. [Galvin]
- f. Should the State Department of Environmental Protection (DEP) not adequately enforce the conditions of approval in *310 CMR 7.02 – Air Quality Non-Major Comprehensive Plan Application Transmittal No. X227251, Application No. MBR-09-IND-005, Modified Conditional Approval* (DEP Permit), the Planning Board hereby incorporates all the conditions of approval so that it has the independent right to enforce the requirements through its Zoning Enforcement Officer or other designee. When the Board's conditions are more limiting than the DEP permit, the more restrictive condition will be enforced by the Board. Applicant shall fund an escrow account to allow the board to hire professionals should they be needed to assist the Board to enforce the following conditions from the DEP Permit.
 - i. Specific emission limits and pollution control devices for 4 different emission causing elements of the project (DEP page 6).
 - ii. 60,000 tons of asphalt per month/300,000 tons per 12 month period or 1,500 tons per day and not more than 250 vehicle trips per day, whichever is lesser.
 - iii. Newport Materials shall conduct a noise survey (during daytime operation), which is in accordance with MassDEP guidelines, to demonstrate the noise impacts from the operation of the equipment are in compliance with Regulations 310 CMR 7.10 and the Bureau of Waste Prevention's Noise Policy No. 90-001. This survey shall be conducted within 120 days of the commencement of continuous operation of the subject equipment. The results shall be submitted to the Planning Board within 20 days of completion of the testing. *If the results demonstrate non-compliance with 310 CMR 7.10, the Board shall take notice and may suspend or revoke this special permit.*
 - v. Requirements for testing of emissions with DEP personnel present 120 days after operational;
 - vi. Specific performance measures relating to air quality and monitoring of air quality.
 - vii. Specific equipment and operational procedures.

Note – the above list of DEP conditions is a summary only, to be supplemented with additional detail.

5. Fire and Life Safety and Hazardous Materials (note emergency access road conditions under Transportation)

- a. The two 30,000 gallon cisterns shall meet all requirements of NFPA-1142. As a condition of approval, a report documenting the sizing of the fire protection cistern should be prepared by a registered fire protection engineer and submitted to the Board. The fire

chief should provide comments relative to the cistern and fire alarm system prior to the start of construction. [Westford Fire Department (WFD)/Woodard & Curran]

- b. WFD and its equipment shall be able to access each of the cisterns so that access road(s) are not blocked and so that other WFD vehicles can pass those vehicles accessing the cisterns. [WFD]
- c. The applicant shall provide the Foam Cart shown on the Site Plans throughout the lifetime of the plant's operation. The applicant shall maintain said Foam Cart in good working order and ensure that it is fully supplied. The equipment shall be available for use by the WFD if needed. [WFD/RJA]
- d. Applicant shall provide (at no cost to the Town) OSHA's confined space training for the WFD staff on an annual basis and also provide for re-certification for WFD employees as needed over the lifetime of the asphalt plant's operation. [WFD]
- e. Asphalt Plant shall have an emergency shutdown mechanism and shut off valves from the fuel source to the burner that will shut down operation if there are any malfunctions of the burner, the exhaust fan damper or the baghouse. Should the emergency shutdown be triggered, the Fire Department shall be notified immediately and the Fire Chief or designee shall have the authority to investigate and inspect the site and shall be allowed to monitor the progress of repairs. [Galvin]
- f. Flammable Combustible Storage for the site shall meet the requirements at a minimum as specified in 527 CMR 9.03. [WFD]
 - i. In accordance with MGL c. 148 § 37, any above ground storage tank of more than 10,000 shall secure a permit from the State Fire Marshal and the local fire chief.
 - ii. Storage of flammable combustible liquids greater than 10,000 shall require a License from the local license authority.
 - iii. Manual shut off valves shall be installed at the #2 Fuel Oil tank and Liquid Asphalt tanks as recommended by the Town of Westford Fire Department within their memo dated October 13, 2009.
- g. On an annual basis, determined by the Fire Chief, the applicant shall provide a detailed briefing to representatives of the Fire Department designated by the Fire Chief with regard to spill containment procedures. The Fire Chief may conduct an inspection of the plant on an annual basis. As part of this inspection the Chief may ensure that all plan personnel understand procedures related to both hazmat containment control and fire suppression. [Galvin]
- h. Keys to the facility shall be placed in a "Knox Box" acceptable to Westford Public Safety personnel. [Galvin]
- i. The applicant shall install a sprinkler system in the furnace area, emergency lighting in all interior spaces, clearly illuminated exit signs within interior spaces of the control room. [Galvin]

- j. Following any malfunction or abnormal condition with regard to emissions equipment, the applicant shall forward a written report to the Building Commissioner reporting such malfunction or abnormal condition, in a manner prescribed by the Commissioner within 15 days of the incident.
- k. For oil Spill Prevention, Control, and Countermeasure (SPCC) plans, any facility that has an oil storage capacity of 1,320 gallons or greater must prepare an SPCC plan. Since the capacity of the No. 2 fuel Oil storage tank is 10,000 gallons, a SPCC plan is required. A copy of the SPCC plan shall be provided to the Board and Town Engineer prior to commencement of the asphalt operations. [Woodard and Curran]
- l. Any breeches in emission controls, fuel storage and containment equipment or fire control issues shall be immediately reported to the Fire Chief and the Building Commissioner. [Galvin]
- m. All storage tanks must be rated at UL 142. Block valves on the containment structure shall be shut when the plant is not being operated. [Galvin]
- n. Applicant acknowledges that they must receive a Hazardous Materials permit from the Board of Health.
- o. Hazardous Materials Data sheets for all material stored at this site shall be provided to the Fire Chief and the Board of Health. An update to these information sheets shall be provided to the Fire Chief and Board of Health forthwith when materials are added to the site. [Galvin]
- p. Zones where dumping, storage or stockpiling of Hazardous Materials are prohibited shall be established on site subject to review by the Town Engineer and Board of Health. These zones must be clearly marked with posted signs plainly visible. [Galvin]
- q. The proposed asphalt facility shall incorporate all standard and optional controls and safety interlocks Gencor provides. [RJA]
- r. Prior to plant operations and/or occupancy permit the operating procedures, including emergencies (e.g. fire), maintenance program, and hot work procedures shall be developed for the Westford Asphalt Facility to address the safety procedures to avoid or minimize human errors through training and procedures. [RJA]
- s. Prior to plant operations (occupancy permit) a general Hazardous Operations (HAZOP) analysis shall be prepared for the site. These elements should be completed prior to the plant operations. [RJA]
- t. If the exhaust system for the conveyor belt, top of the silo and bottom of the silo, are not operational the manufacturing process shall stop until remedied. [RJA]

6. Stormwater Management

- a. Applicant shall introduce appropriate site measures to prevent sediment from being tracked into Groton Road and to provide the Board with details on those proposed measures. [Town Engineer]
- b. A draft maintenance agreement is required as part of the Stormwater Management Permit application. The agreement is required to comply with the maintenance requirements of

the Stormwater Management Regulations including: Sections 6.H, 6.K and 12.0. The final maintenance agreement shall be submitted to the Town for review and approval prior to the completion of construction. The maintenance agreement shall be recorded at the Middlesex North Registry of Deeds once approved by the Town. [Town Engineer]

- c. As-built record drawings are required to be completed in accordance with Section 6.H of the Stormwater Management Regulations upon completion of the project. The Engineer of Record shall provide a written certification stating that the project was constructed in accordance with the approved design plans. [Town Engineer]
- d. The applicant shall comply with construction inspection requirements outlined in Section 11.0 and the continuing inspection and maintenance requirements in Section 12.0 of the Westford Stormwater Management Regulations. [Town Engineer]
- e. Applicant shall protect the infiltration basin and other structural stormwater Best Management Practices (BMPs) during construction in order to prevent a reduction in the long term infiltration capacity of the soil. All stormwater BMPs shall be cleaned of any silt and sediment once construction is complete and the project has been fully stabilized. This may require the removal and replacement of soil to make certain that the infiltration rate of the soil is met. [Town Engineer]
- f. The final stormwater operation and maintenance plan (O&M) shall be updated to include a simplified site plan that would highlight the location of the various structural pollutant controls and stormwater BMPs outlined in the O&M Plan. [Town Engineer]
- g. The applicant shall comply with the O&M in perpetuity and as outlined in the final maintenance agreement. [Town Engineer]
- h. Applicant shall demonstrate that post construction drainage areas closely match the drainage areas shown on the post-development drainage map submitted. [Town Engineer]
- i. The Stormwater Management Permit decision shall reference the SWPPP prepared for the project and require compliance with that SWPPP until the project is fully stabilized. Prior to commencement of any site clearing or construction activities, the applicant shall provide a copy of the final Stormwater Pollution Prevention Plan (SWPPP) to the Engineering Department. The SWPPP shall be received no later than the required pre-construction meeting. [Town Engineer]
- j. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, the Applicant shall inspect, clean and repair (if necessary) to the satisfaction of the Engineering Department the existing stormwater management system. [Town Engineer]
- k. The Applicant shall conduct soil testing within the footprint of each subsurface infiltration system and within the stilling basin prior to the start of construction and in the presence of the Engineering Department to verify proposed design assumptions and confirm compliance with the Stormwater Standards. [Town Engineer]

- l. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, the Design Engineer shall certify that the proposed subsurface infiltration system was installed in accordance with the manufacturer's specifications. [Town Engineer]
- m. The Applicant shall provide copies of the NPDES Construction General Permit to the Engineering Department no later than the required Preconstruction Meeting. Once the contractor is selected, the USEPA Notice of Intent (NOI) for construction activities regulated under the Construction General Permit and Stormwater Pollution Prevention Plan should be provided to the Town Engineer prior to the start of construction. [Town Engineer/Woodard & Curran]
- n. The Applicant shall provide a copy of the Long-Term Pollution Prevention Plan to the Engineering Department no later than the required Preconstruction Meeting. [Town Engineer]
- o. The Applicant shall protect the subsurface infiltration systems and stilling basin during the construction process to prevent a reduction in the long term infiltration capacity of the soil. Once construction is complete, the Applicant shall clean these stormwater BMPs of any silt and sediment. At the discretion of the Engineering Department, this may require the removal and replacement of soil to make certain that the infiltration rate of the soil is met. [Town Engineer]
- p. The Applicant shall combine the Operation and Maintenance (O&M) Plan and Long-Term Pollution Prevention Plan into a bound letter-sized document that shall be provided to the Owner and Operator, and the Applicant shall comply with this document in perpetuity. This document shall also include a simplified site plan that highlights the location of the various structural pollutant controls and stormwater BMPs. This document shall apply to post-construction management of the site and shall be separate from the required SWPPP. [Town Engineer]
- q. The O&M Plan shall be recorded with the decision at the Northern Middlesex Registry of Deeds. Compliance with the O&M Plan shall be a condition of approval. [Woodard & Curran]
- r. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, the applicant shall have an as-built plan of the site and stormwater systems and provide an engineer's certification stating that the project was constructed in accordance with the approved design plans. The as-built plan shall conform to the specifications provided in section 218-25 of Westford's Subdivision Rules and Regulations and section 6.H of the Westford Stormwater Management Regulations upon completion of the project. [Town Engineer]
- s. An asphalt plant with a point source discharge to a navigable water body must submit a Notice of Intent (NOI) to the USEPA sixty days prior to discharge in accordance with Sector D (Asphalt Paving and Roofing Materials and Lubricant Manufacturers) of USEPA's Multi Sector General Permit for Industrial Activities (MSGP). Prior to submitting the NOI, the facility must prepare an industrial stormwater pollution prevention plan (SWPPP) that describes potential pollutant sources; structural and non-structural best management practices (BMPs); and other stormwater management procedures such as preventive maintenance, good housekeeping, pollution prevention team, spill prevention and

response, training, monthly visual inspections, record-keeping, and reporting. This NOI shall be submitted as draft to the Town for review prior to submission to the USEPA. [Woodard & Curran]

- t. The applicant shall not be allowed to pave any additional areas on-site without prior SPR and MCP approvals from the Planning Board. [Woodard & Curran]

7. General conditions of approval

- a. Once the contractor is selected, a construction schedule shall be provided to the Building Commissioner for review. This schedule should be updated on a monthly basis and should address the implementation of erosion control measures during the course of construction. [Woodard & Curran]
- b. Any fill used in connection with this project shall be clean fill. Any fill shall contain no tree stumps, trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
- c. As used herein, the term "Applicant" shall mean the Applicant, its heirs, successors and assigns. The term "Board" as set forth herein shall mean the Westford Planning Board. The provision of this approval shall apply to and be binding upon the Applicant, its employees and all successors and assigns in interest or control.
- d. All work is to be done in accordance with the aforementioned record plans. Any changes, revisions or modifications to the plans as approved herein shall require approval by the Planning Board. Non-substantive changes, as determined by the Board, may be approved by the Board at a regularly scheduled public meeting. Substantive changes may be approved by the Board through a public hearing process.
- e. The applicant is reminded to contact the Building Commissioner to determine sign permitting requirements for proposed facilities.
- f. Prior to commencing any construction or site work, the applicant shall record this decision with the Middlesex North Registry of Deeds and shall provide evidence of such recording to the Planning Board.
- g. The Special Permits shall lapse after two (2) years from the grant hereof if a substantial use has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.
- h. All landscaping features, structures and areas shall be properly maintained. Dead shrubs or trees shall be replaced within one growing season.
- i. The Limits of Work, as shown on the approved plans, shall be staked out in the field by a Professional Land Surveyor. Orange construction fencing (or an approved equivalent) shall be installed at the Limits of Work. All trees within the Limits of Work that are to be retained during the construction process shall be properly flagged to avoid damage or removal during the construction process. Such flags shall be installed prior to any site clearing. The

Limits of Work and erosion control measures shall be inspected and approved by the Town Planner prior to commencing any additional site work.

- j. Retaining walls over four (4) feet high shall be reviewed and stamped by a Structural Engineer.
- k. The Applicant acknowledges that this approval is subject to completion of all necessary filings and any order of conditions issued for this project by the Town of Westford Conservation Commission. In addition, if any of the approved site features are amended by the Conservation Commission in a way that would require an amendment, then the Applicant shall submit these changes to the Planning Board for their review and approval.
- l. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, all required legal documents including but not limited to covenants, easements, agreements, monitoring agreements shall be submitted to the Town Planner and Town Counsel for review and approval. It shall be the responsibility of the Applicant to pay all legal cost associated with the review of this decision and documents associated with this decision.
- m. Any blasting activity at the site must conform to the requirements of the Town's Fire Department officials, the State Fire Marshall's Office and any other appropriate regulatory official. Additionally the Contractor shall be responsible for seismograph monitoring, notification to neighbors within the immediate work area prior to blasting and posting a fire detail on the site. If blasting is required for the construction of the site use the following steps will be taken to monitor/rectify any potential damage as a result of the blasting:
 - i. The Applicant shall provide documented inspections, i.e. videotaping, of any foundations and pools within 400' of any expected blast area prior to the start of any blasting;
 - ii. The Applicant shall provide pre and post blasting water testing for all residents within 400' of any expected blast area in the subject subdivision prior to the start of any blasting. Water quality, including radon testing, and a specific capacity/short term pumping test shall be included in this testing;
 - iii. The Applicant or their hired contractors, shall notify those residents within 400' of any expected blast area, when blasting will begin on the site and will again notify them when all blasting is complete;
 - iv. Blasting hours will be from 8:00 a.m. to 4:00 p.m., weekdays only;
 - v. The Applicant shall rectify those problems that are proven to be a result of blasting on the subject subdivision, i.e. foundation cracking and deterioration in water quality;
 - vi. The use of any perchlorate blasting material is prohibited;
 - vii. Hours of operations pertaining to air hammering or similar practices shall be limited to Weekdays between the hours of 8:00AM through 4:00PM.

- n. Within 60 days of the issuance of this decision and prior to commencement of plant operations and/or issuance of any building permits, the applicant shall provide the Permitting Department with the recordable Mylar plan set (sheets to be determined by Planning Staff), one (1) full Mylar plan set, five (5) sets of full sized and two (2) sets of reduced copies of the final *endorsed* plan set, an electronic copy of the *endorsed* plan set, as well as a digital copy of the final set of approved plans. Final plans shall be received no later than the required pre-construction meeting. The digital copy of the final set of approved plans must follow the five requirements listed below:
- i. All plans and specifications must be submitted on electronic media (CD or DVD_ROM using an IBM-PC or compatible file format). Acceptable file formats include: AutoCAD *.dwg, AutoCAD *.dxf, ArcView *.shp, or ArcGIS Geodatabase *.mdb. The files must be identical to the printed plan and contain all information included on the written plan.
 - ii. All digital mapping data must be delivered in the Massachusetts State Plane Coordinate system with a horizontal datum of NAD83 and vertical datum of NGVD88.
 - iii. Each feature type must be organized in the CAD or GIS data structure as a separate layer using logical layer names. For example, there must be separate CAD layers for buildings, roads, parcel lines, and wetlands. Having all these features in a single CAD layer or GIS file will not be accepted.
 - iv. Documentation of the data format must be provided with a description of the CAD layers and list of the types of features placed in each layer. Submission of multiple files must also include a list of the files and their purpose.
 - v. The data submitted must include documentation on the method used to gather the data, the name of the person(s) responsible for preparing the data, contact information, an estimation of the horizontal and vertical accuracy, and the date of data capture. All media shall be free from any and all defects and viruses, and labeled as to their contents.
- o. Any minor revisions to the design of any drainage control measures shall henceforth be subject to the approval of the Town Engineer and the Town Planner. Significant modifications will require review by the Planning Board in accordance with condition 7.d.
- p. Impervious areas associated with the development (such as building and pavement areas) shall not exceed those sizes used in the stormwater calculations and as shown on the plans unless reviewed and approved by the Town Engineer.
- q. Prior to the commencement of any construction or site work the Applicant shall initiate a pre-construction meeting with the Engineering Department, Planning Department and other relevant Town Departments and Town Staff. All relevant contractors and subcontractors involved with site preparation/site construction activities shall attend this meeting. This approval with conditions shall be reviewed by all parties involved.

Planning Board members present and vote

Michael Green, Chair
Dennis Galvin, Vice Chair
Katherine Hollister
Matt Lewin
Darrin Wizst

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

I hereby certify that this is a true copy of the decision rendered by the Planning Board and filed in the office of the Town Clerk on _____, ____; I further certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Westford, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Kaari Mai Tari
Town Clerk

cc: Attorney Douglas C. Deschenes for 540 Groton Road LLC, Newport Materials LLC, Planning Boards of Acton, Carlisle, Chelmsford, Groton, Littleton, Tyngsborough, Abutters within 300 feet; Town Engineer, Building Commissioner, Westford Fire Department, Zoning Board of Appeals, Board of Health



File Number: PB 1504 SP WRPOD
540 Groton Road also known as 10 Commerce Way -- Asphalt Plant

Planning Board
Town of Westford
55 Main Street
Westford, MA 01886
Tel: 978 692 5524
Fax: 978 399 2732

Notice of Decision

PB 1504 SP WRPOD
Special Permit for Water Resource Protection Overlay District
10 Commerce Way / 540 Groton Road

Applicant: Attorney Douglas C. Deschenes for 540 Groton Road LLC and Newport Materials, LLC

Property Location: 540 Groton Road also known as 10 Commerce Way, Westford, MA 01886

Zoning District: Industrial A (IA)

Assessors Map and Parcel: Map 048 Parcel 0011 Lots 0234, 247, 248 and 0250

Lot Size: 115.52 acres (approximately 4 acres designated for proposed asphalt plant and related materials processing and storage areas.)

Application Submitted: January 5, 2015

Public Hearing Dates: January 21, 2015
February 12, 2015
March 2, 2015
March 16, 2015
April 6, 2015
April 13, 2015

Planning Board Vote: April 13, 2015

Filed with Assistant Town Clerk: _____

Appeal Period Ends: _____ (20 days after filed with Town Clerk)

Available for Pick-up: _____

DECISION

At its meeting on **April 13, 2015**, the Planning Board voted ___-___ to **APPROVE** a **Special Permit for Water Resource Protection Overlay District (WRPOD)** submitted under Section 8.1 of the Town of Westford Zoning Bylaw in response to the application for construction of an Asphalt Plant and Materials Processing Facility located at 10 Commerce Way, also known as 540 Groton Road.

BACKGROUND

[See SP MCP Approval Decision]

PROJECT SUMMARY

[See SP MCP Approval Decision]

FRAMEWORK OF DECISION

[See SP MCP Approval Decision]

SPECIAL PERMIT WATER RESOURCE PROTECTION OVERLAY DISTRICT FINDINGS

8.1.10 Special Permit Criteria.

Special permits shall be granted only if the SPGA determines, after reviewing the recommendations of the reviewing parties delineated herein, that groundwater quality resulting from on-site wastewater disposal or other operations on-site shall not fall below the more restrictive of federal or state standards for drinking water, or, if existing groundwater quality is already below those standards, on-site disposal or operations shall result in no further deterioration.

8.1.11 Decision.

The Planning Board may approve, approve with conditions, or deny an application for a special permit that is governed, in any manner, by the provisions of this Section.

The proposed development requires the WRPOD Special Permit because it will contain 10,000 gallons of No. 2 fuel Oil and two 30,000 gallon tanks of liquid asphalt in above ground tanks. Applicant provided information about the spill prevention related to the storage of Hazardous Materials. Furthermore, the DEP Permit contains conditions related to the storage, monitoring and reporting of hazardous materials.

The Westford Fire Department reviewed and commented on the proposal in 2009 -10 and referenced the 2009-10 peer review conducted by RJA. Conditions specified by the WFD have been incorporated into this decision.

The Board noted that the project requires a Hazardous Materials Permit from the Board of Health prior to plant operation and the Board provided numerous conditions related to the protection of groundwater, including but not limited to Conditions 4a, 4b, 4f, 5a, 5e-f, 5j-o, 5q-s. ***As conditioned, the Board found that this criterion is met.***

CONDITIONS OF APPROVAL

[Selected conditions applicable to Water Quality and Groundwater projection from SP MCP Approval Decision]

The provisions of this Approval and Conditions shall be binding upon every owner or owners of each of the lots, as shown on the Plan, and the executors, administrators, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with said land in full force and effect for the benefit of and enforceable by the town of Westford. Reference to this approval shall be entered upon the Plan and this Approval shall be recorded in the Middlesex North Registry of Deeds with the Plan.

Planning Board members present and vote

Michael Green, Chair
Dennis Galvin, Vice Chair
Katherine Hollister
Matt Lewin
Darrin Wizst

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

I hereby certify that this is a true copy of the decision rendered by the Planning Board and filed in the office of the Town Clerk on _____, ____; I further certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Westford, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Kaari Mai Tari
Town Clerk

cc: Attorney Douglas C. Deschenes for 540 Groton Road LLC, Newport Materials LLC, Planning Boards of Acton, Carlisle, Chelmsford, Groton, Littleton, Tyngsborough, Abutters within 300 feet; Town Engineer, Building Commissioner, Westford Fire Department, Zoning Board of Appeals, Board of Health



File Number: PB 1504 SWM
540 Groton Road also known as 10 Commerce Way -- Asphalt Plant

Planning Board
Town of Westford
55 Main Street
Westford, MA 01886
Tel: 978 692 5524
Fax: 978 399 2732

Notice of Decision

PB 1504 SWM – Stormwater Management Permit 10 Commerce Way / 540 Groton Road

Applicant: Attorney Douglas C. Deschenes for 540 Groton Road LLC and Newport Materials, LLC

Property Location: 540 Groton Road also known as 10 Commerce Way, Westford, MA 01886

Zoning District: Industrial A (IA)

Assessors Map and Parcel: Map 048 Parcel 0011 Lots 0234, 247, 248 and 0250

Lot Size: 115.52 acres (approximately 4 acres designated for proposed asphalt plant and related materials processing and storage areas.)

Application Submitted: January 5, 2015

Public Hearing Dates: January 21, 2015
February 12, 2015
March 2, 2015
March 16, 2015
April 6, 2015
April 13, 2015

Planning Board Vote: April 13, 2015

Filed with Assistant Town Clerk: _____

Appeal Period Ends: _____ (20 days after filed with Town Clerk)

Available for Pick-up: _____

DECISION

At its meeting on **April 13, 2015**, the Planning Board voted ____-____ to **APPROVE** a **Stormwater Management Permit** submitted under Section 8.1 of the Town of Westford Zoning Bylaw in response to the application for construction of an Asphalt Plant and Materials Processing Facility located at 10 Commerce Way, also known as 540 Groton Road.

BACKGROUND

[See SP MCP Approval Decision]

PROJECT SUMMARY

[See SP MCP Approval Decision]

FRAMEWORK OF DECISION

[See SP MCP Approval Decision]

STORMWATER MANAGMENT FINDINGS

As discussed by the Board.....

CONDITIONS OF APPROVAL

[**Selected conditions** from the SP MCP Approval Decision]

The provisions of this Approval and Conditions shall be binding upon every owner or owners of each of the lots, as shown on the Plan, and the executors, administrators, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with said land in full force and effect for the benefit of and enforceable by the town of Westford. Reference to this approval shall be entered upon the Plan and this Approval shall be recorded in the Middlesex North Registry of Deeds with the Plan.

Planning Board members present and vote

Michael Green, Chair
Dennis Galvin, Vice Chair
Katherine Hollister
Matt Lewin
Darrin Wizst

Filed with the Town Clerk:

Assistant Town Clerk

Date

Appeal Period Ends:
(20 days from filing with Town Clerk)

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

I hereby certify that this is a true copy of the decision rendered by the Planning Board and filed in the office of the Town Clerk on _____, ____; I further certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Westford, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Kaari Mai Tari
Town Clerk

cc: Attorney Douglas C. Deschenes for 540 Groton Road LLC, Newport Materials LLC, Planning Boards of Acton, Carlisle, Chelmsford, Groton, Littleton, Tyngsborough, Abutters within 300 feet; Town Engineer, Building Commissioner, Westford Fire Department, Zoning Board of Appeals, Board of Health



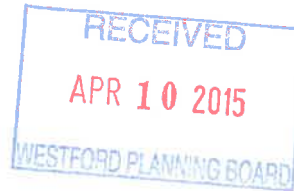
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April 10, 2015

Jonathan M. Silverstein
jsilverstein@k-plaw.com

Planning Board
Town of Westford
Westford Town Hall
55 Main Street
Westford, MA 01886



Re: Newport Materials

Dear Members of the Planning Board:

I have been asked to respond to the April 8, 2015 letter to you from Attorney Thomas Reilly, counsel to the applicant, regarding the potential conditions/issues for consideration prepared by Planning staff prior to the Board's last public hearing session.

As a preliminary matter, it is important to address the unfortunately vituperative tone of Mr. Reilly's correspondence. Mr. Reilly's repeated use of pejorative terms such as "bad faith", "underhanded", "gross overreaching", and "disingenuous" is unwarranted. Planning staff have dedicated countless hours on an expedited schedule to move the remand process forward and to make the process as smooth as possible. They have had to coordinate multiple schedules of Board members, staff, consultants, applicant representatives and others. They have had to find venues for the hearing sessions that would accommodate the extremely large numbers of interested parties, who have attended each hearing session. They have waded through thousands of pages of submissions and patiently waited for long-delayed submissions promised but frequently not timely delivered by the applicant's representatives. Planning staff have, in my opinion, performed these tasks with professionalism and diligence, and it is extremely unfortunate that the applicant's counsel has chosen again to question their motives and professionalism in an apparent effort to frighten the Board into doing his bidding.

As to the substance of Mr. Reilly's claims, I disagree with his arguments that the issues presented to the Board for its consideration are "legally untethered" to the applications before the Board. Though there is, of course, no guarantee as to how a reviewing court would rule on any decision or condition by a local board, the notion that any of the issues for consideration would be construed as bad faith or wholly unrelated to the applicant's requests is incorrect, in my opinion.

As I noted at the last hearing session, major commercial projects are treated as a separate use category in the Zoning Bylaws. We argued, in the underlying litigation, that a site must be treated as a whole when an MCP special permit is requested. The Land Court did not reach this issue in rendering its decision (because it found that the asphalt plant itself triggers the MCP thresholds), but courts in other regulatory contexts have found that property owners may not evade regulation by "segmenting" their use of land into smaller projects. The Board could reasonably argue, therefore,

KOPELMAN AND PAIGE, P.C.

Planning Board

April 10, 2015

Page 2

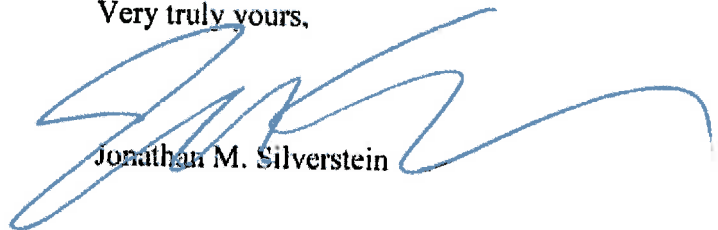
that it may properly consider the cumulative impacts of the applicant's use of the subject property in determining whether to issue an MCP special permit and what conditions to impose, which would include use of the two rock crushers and other components of the materials processing facility. Contrary to Mr. Reilly's suggestion, the Court did not rule otherwise. Rather, the Court did not address this issue at all.

On the issue of mitigation, it was the applicant's counsel who unequivocally stated at the outset of the remand hearing that all materials it had previously submitted to the Board were incorporated into the record, with the exception of new plans or submissions that clearly superseded those materials. Planning staff reasonably concluded that this included the mitigation proposal voluntarily submitted by the applicant. Now that it is apparent that the applicant is not willing to abide by its previous mitigation proposal, the Planning Board may want to evaluate this issue further and/or request an updated mitigation plan from the applicant.

The remaining complaints articulated by Mr. Reilly relate to issues that should simply be discussed by the Board. For instance, Mr. Reilly suggests that use of fluorescent tape to identify local vehicle trips—again, an issue raised for “consideration” not as a definitive condition—is “impractical and unsafe”. The Board may wish to request input from actual public safety experts to evaluate the veracity of this statement. Issues of performance security are likewise appropriate subjects of discussion and consideration by the Board.

Please do not hesitate to contact me with any further questions regarding this matter.

Very truly yours,



Jonathan M. Silverstein

JMS/jam

cc: Town Manager

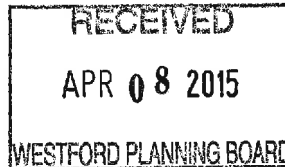
Zoning Board of Appeals

519566/WSFD/0040



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Thomas F. Reilly
Of Counsel
Direct Dial: 617 670 8509
Direct Fax: 617 670 8709
E-mail: treilly@mgmlaw.com
Admitted In: MA,

April 8, 2015

Town of Westford
Planning Board
c/o Jonathan Silverstein, Esq.
Kopelman and Paige, PC
101 Arch Street
Boston, MA 02110

Town of Westford
Zoning Board of Appeals
c/o Jonathan Silverstein, Esq.
Kopelman and Paige, PC
101 Arch Street
Boston, MA 02110

**RE: Application pursuant to Remand by Land Court in
Newport Materials, et al v. Planning Board of Westford, et al.
10 Misc. 529867 (AHS)**

Dear Members of the Planning Board and Zoning Board of Appeals:

Various conditions in the "Issues for Consideration" memorandum dated April 6, 2015 violate the Court's December 8, 2014 Decision and settled Massachusetts law.

The Court's Decision states: "it would appear to this court that the Project [defined, by the Court, as the asphalt plant at Decision, pp. 6-8] would ... be permitted as of right as a light manufacturing use at Locus, subject to such conditions as the Board may reasonably require in order to approve Newport's special permit applications." Decisions, p. 32 (emphasis supplied).

Massachusetts law prohibits the imposition of conditions to special permits that are tantamount to a denial under the guise of a regulation. V.S.H. Realty v. ZBA Plymouth, 30 Mass. App. Ct. 530, 534-35 (1991) citing SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 110 n.16 (1984)(conditions must not "be used to enforce outright prohibitions under the guise of regulation").

Conditions, including those identified below, are completely unreasonable, untethered to legitimate issues (and/or directly controverted by the record), violate the Court's ruling and violate Massachusetts law as they amount to an illegal denial of the Project.

- (1) All conditions that purport to link the crusher (a pre-existing use permitted by the ZBA on February 11, 2009, and again on February 24, 2010 and February 16, 2011 by unanimous vote) to the asphalt plant are unreasonable and illegal. E.g., Conditions A2c, A3, B3c, and B6. The Court has already ruled that the "Project" before the Board is the asphalt plant, and not any pre-existing use(s) on the 115+ acre lot. Decision, pp. 6-

8. The uncontroverted evidence in the record is that the Project complies with the MCP By-law including, but not limited to, the “Noise” and “Traffic Management” provisions (By-law 9.3A.4(2) & (6) respectively).

- Regarding sound, the **Board’s own sound peer reviewer concluded:** “[w]e judge that the sound model and proposed noise reduction measures provide useful sound estimates that indicate **compliance with 53 dBA sound criteria** along the west boundary of the asphalt plant site at a receptor elevation of 5 ft above grade.” (Barnes ltr. dated 4/2/15, p. 2)(emphasis supplied).
- Regarding traffic, the **Board’s own sound peer reviewer concluded:** “the currently proposed Project, following implementation of proposed access mitigation measures and stipulated daily vehicle trip restrictions, will result in **no notable detrimental capacity or queue impacts** to travel on Groton Road or area roadways serving the site within Westford.” (Michaud ltr. dated 3/11/15, p. 1)(emphasis supplied).

Planning Staff’s attempt to couple the Project (i.e., the asphalt plant) to the pre-existing crushing operation is an underhanded attempt to avoid the conclusions of the Town’s own consultants. Moreover, Planning Staff’s conclusion that the “two uses are physically and procedurally tied together” is flat out wrong. The crusher is a stand-alone business subject to a separate permit with its own conditions of operation. The crusher will supply material (recycled asphalt product/RAP) to the asphalt plant, just like the neighboring quarry (which is owned by a third-party) and other third-party suppliers of material to the asphalt plant. Clearly the quarry and the third-party suppliers are not part of the Project now before the Board, just like the crusher is not part of the Project on remand.

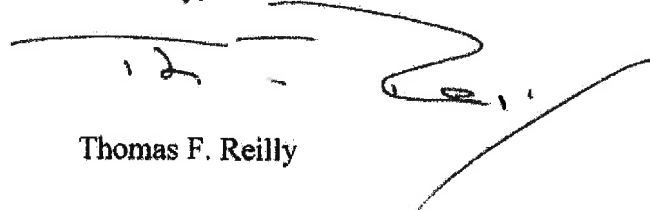
- (2) Condition B3c, which purports to limit vehicle traffic to the entire 115+ acre property to 450 trips (e.g., 225 vehicles coming and going from the site), is patently unreasonable and illegal. 150 trips are already permitted for the crusher per the ZBA decision voted on February 16, 2011. At trial and on remand, Newport has agreed to limit vehicle trips to the asphalt plant to 250 trips. These two uses are expected to occupy approximately 4 acres of the 115+ acre property. On remand, the Board has **no** authority to restrict vehicle trips to the remaining 110+ acres to 50 total vehicle trips per day (or 25 vehicles coming and going from the site). Accordingly, this condition epitomizes Planning Staff’s gross overreaching and bad faith. Clearly, the Town’s authority concerning vehicle trips associated with the rest of the site (i.e., the remaining 110+ acres) exists if/when other project(s) and permit(s) are sought in accordance with the By-laws, and not on this remand.
- (3) The mitigation proposed by Newport in March/April 2010 (**five years ago**) referenced in condition B9 has long since expired. It is disingenuous for the Town to suggest otherwise. In the interim, Newport has endured “over four years of costly litigation”

(Decision, p. 33 fn.45). Over the course of the last 6+ years, the Town has conducted itself, and continues to conduct itself, in a totally inconsistent, unreasonable and unlawful manner and Planning Staff continues to demonstrate an "inability" and flagrant "unwillingness" (Decision, p. 33, fn.45) to comply with the Decision and the law. Newport remains willing to discuss reasonable conditions and mitigation.

(4) There are various other conditions that are impractical, unreasonable, erroneous and/or illegal. For example, but not limited to:

- Condition A3avii regarding the crusher is outside the scope of the remand, misleading and specious. As explained above, the crusher was properly approved by the ZBA back in 2009.
- Condition B3e4 regarding fluorescent tape is impractical and unsafe.
- Condition B4b regarding a bond in an unspecified amount where the Town's consultant and the Town's Fire Prevention Officer have already determined that the Project (specifically the tanks and vessels) meets (or exceeds) standards in the pertinent Massachusetts regulations and national consensus codes is unprecedented, ultra vires and in bad faith. (see, e.g., RJA ltr. dated 2/12/10 and Parson's ltr. dated 10/13/09).
- Condition B4f regarding an escrow account with no amount specified purportedly to be used when, in the discretion of the Board, the DEP fails its duties under the DEP air permit is unconscionable and subject to abuse by the Town.
- Condition B7 regarding rescission of the subdivision plan is punitive and illegal.

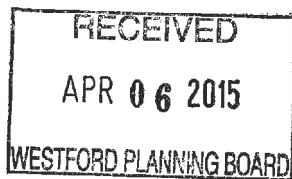
Sincerely,



Thomas F. Reilly

TFR/aaa
#1398440

cc: Doug Deschenes, Esq.



Planning Board
Town of Westford
55 Main Street
Westford, MA 01886
Tel: 978 692 5524
Fax: 978 399 2732

Issues for Consideration
PB 1504 SP MCP SP WRPOD SPR SWM

A. Special Circumstances that apply to these petitions

1. Land Court Remand

- a. The Planning Board (Board) is considering these petitions under remand from Land Court Decision issued on December 8, 2014, *10 MISC 429867 (AHS) – Newport Materials, LLC and 540 Groton Road, LLC, Plaintiffs, vs. Planning Board of the Town of Westford and the Town of Westford, Defendants*, (LC Decision).
- b. Should the Board issue approvals for the requested permits, such approval is based upon the requirements and holdings of the LC Decision. The Planning Board has not yet had the opportunity to appeal from the LC Decision, as final judgment has not entered in the litigation, and it does not relinquish its rights to appeal the LC Decision. Of particular note, but without limiting the foregoing, the Board notes that the LC Decision holds that the proposed use would constitute a Light Manufacturing use allowed (with an MCP Special Permit) in the IA Zoning District. The Planning Board does not concur with this holding but is obligated by the LC Decision to accept it for purposes of this Remand. If this holding is reversed on appeal, any relief granted hereunder would become null and void.

2. Major Commercial Project (MCP) Special Permit

- a. Section 9.3A of the Zoning Bylaw and other relevant sections of the Bylaw, including, but not limited to, Section 3.1.2 sets forth the regulatory framework for the MCP.
- b. An MCP is required whenever one of the MCP criteria is triggered on a site. For example, if a site has an existing 10,000 square foot building and the property owner wants to expand by another 10,000 square feet, this expansion requires an MCP because the total site would have 20,000 square feet, which exceeds the 15,000 square feet threshold, even though each segment of the project is under the 15,000 square foot threshold. In other words, the MCP thresholds apply to a property as a whole, and the various uses of that site may not be segmented into smaller individual projects to avoid MCP review.
- c. Therefore, the Board considers the entirety of subject site (115 acres) as being subject to the MCP.

3. Materials processing is part of the proposed bituminous concrete manufacturing plant (asphalt plant).

- a. The materials processing facility, while approved as a USE by the Board of Appeals in 2009, is an integral part of the asphalt plant operations.
 - i. The Department of Environmental Protection Permit (DEP Permit) includes both the asphalt plant and the rock crushing and materials storage facility. The DEP to regulated these uses together, and it makes sense for the Board to do so as well.

- ii. The materials processing area and the asphalt plant are contained within a single fenced area and joined by internal driveways.
 - iii. There will be shared trips in which a truck delivering recycled asphalt for crushing at the materials processing facility may then be loaded with asphalt from the silos.
 - iv. The applicant has represented that up to 50% of the Recycled Asphalt Pavement (RAP) used for manufacturing of asphalt will be provided from the materials processing facility.
 - v. Asphalt manufacturing components such as sand, fine sand, aggregate and RAP are all stored within the materials processing facility.
 - vi. The asphalt plant is designed to operate with RAP, which is manufactured in the materials processing facility and also other ingredients for asphalt such as sand, fine sand, and aggregate are stored within the materials processing yard area.
 - vii. The materials processing facility exists without benefit of a Site Plan Review (SPR), and is therefore a legally noncompliant use. The materials processing plant did not receive a Site Plan Review (SPR) approval in 2009 from the Planning Board. Section 9.4.1 of the Zoning Bylaw states that *"The following types of activities and uses are subject to site plan review by the Planning Board. 1. Construction, exterior alteration, exterior expansion of a nonresidential or multifamily structure or tower, or change in use..."* Therefore SPR for the materials processing facility is required.
- b. As described above, the proposed asphalt plant, as proposed, is designed to operate with RAP which is being produced in the materials processing yard. The two uses are physically and procedurally tied together. Therefore both facilities shall be considered and conditioned as part of any approval of the MCP and SPR.

4. Zoning relief required by LC Decision.

The LC Decision, as clarified by the Court at a Hearing on January 6, 2015, requires a Variance for multiple uses on a site. Applicants submitted a petition for Variance to the Zoning Board of Appeals (BOA), which is still pending at this time. The BOA's hearing is scheduled to be re-opened in early May 2015. The issuance of any approvals/permits by the Planning Board does not obviate the applicant from securing the necessary Variance relief from the BOA.

B. Waiver requested under Section 9.3A.6 of the Zoning Bylaw.

1. Applicant requested a waiver from the MCP standard 9.3A.4.2. Noise. Ambient Noise Level. No person shall operate or cause to be operated any source of sound in a manner that creates a sound which exceeds 70 dBA or 10 dBA above ambient, whichever is lower, when measured at the property boundary of the receiving land use.

- a. The applicant maintains that the construction of a 1,200 foot long sound attenuation wall at 35 feet in height along the westerly property line will meet the standard. However, the applicant seeks a waiver from the construction of the wall and the performance standards. Specifically, the applicant requests the ability to cause sound that is 75dBA (and 32 dBA above ambient) at the westerly property boundary.

- b. The Planning Board can grant relief to this Special Permit standard through a waiver with findings and reasons for such action. If the Board grants a waiver, the applicant would not have to build the sound attenuation wall. Alternatively, the Board may grant a partial waiver to allow the applicants to construct a smaller sound attenuation wall, which would not result in full compliance with standard 9.3A.4.2, but would result in some attenuation of the sound at the western boundary of the site. .
- 2. Should the Planning Board grant such waiver, additional Variance relief is required from the Board of Appeals. the Applicant submitted a petition to the BOA to exceed the definition of the term "quiet" in the light manufacturing definition. The BOA public hearing on this matter is scheduled to reopen in early May 2015.

C. Compilation of Conditions presented to the Board throughout the Public Hearings

1. Decisions - When are they Effective?

- a. Decisions to approve the petitions are not effective until the Board of Appeals grants relief for multiple principal uses on a site as required in the LC Decision.
- b. Decisions to approve the applications shall become null and void should applicable portions of the LC Decision be vacated on appeal.
- c. Decisions to approve the applications are null and void upon any violation of any of the conditions of approval.
- d. Special Permit decisions to approve are valid for a period of __??__ year(s) from commencement of operations. Applicants may apply for extension of the approvals six months prior to expiration.

2. Operating Limitations

- a. Hours of operation limited to 6:00 a.m. to 6:00 p.m. Monday through Friday and 7:00 a.m. to 5:00 p.m. on Saturday, no Sunday operations for all uses on the site. [BOA 09002 SP condition] There shall be no night operations (i.e. no production or trucking operations between 6:00 p.m. and 6:00 a.m.).
- b. No operations of the asphalt plant and materials processing facility are allowed from December 15 to March 15. [DEP Permit]
- c. Average monthly production from the asphalt plant is limited to 1,500 tons of bituminous product per diem for the months the plant is operating. [VAI]
- d. Any new or expanded use of the site, including without limitation additional use of the 14,000 office building, shall require a modification of the SPR, and the MCP SP.
- e. Town staff may inspect the site with 24 hours notice to the property owner or, in the event of a documented complaint regarding noncompliance with any condition hereof, at any time during operation of the facility.
- f. Applicant shall provide an annual report to the Board or its designee on or about January 1 of each year. The report shall be certified by the Operator of the asphalt plant and the materials processing yard and shall include:

- i. Quantity of asphalt produced per month;
- ii. Quantity of materials brought into the site for processing per month;
- iii. Quantity of RAP used by the asphalt plant per month;
- iv. Quantity of crushed stone purchased from adjacent land owner (Fletcher Quarry) per month
- v. Quantity of crushed stone purchased from other sources per month;
- vi. Quantity of sand, liquid asphalt, number 2 fuel oil brought onto the site per month.

3. MCP - Traffic/Transportation

- a. Commercial truck access and egress from the site.
 - i. All commercial truck traffic entering Commerce Way from Groton Road shall enter westbound on Route 40 (Groton Road). No commercial trucks shall turn left from Groton Road into the site. [Derived from BOA 09002 SP condition of approval #1]. It shall be the applicants' responsibility to notify all users of the site of this restriction, and applicants shall be responsible for any violation hereof.
 - ii. Large trucks (more than four wheels) shall turn left when exiting the site (Commerce Way). Trucks with local destinations [*alternatively to the Towns of Westford, Chelmsford, ____*] (local paving contractors) that require right-turn egress will be managed by a color coded ticket procedures that allows for enforcement by Westford Police Department. *In such cases the site management shall provide the truck operator with a written certificate identifying the owner of the truck, the date and time and the destination of the delivery. Such certificate shall be in a form approved by the Chief of Police. It shall be the applicants' responsibility to notify all users of the site of this restriction, and applicants shall be responsible for any violation hereof. [Galvin]*
- b. Advance Advisory/Warning Signs. Applicant shall install advance warning signs along Groton Road following MUTCD guidance ("Trucks Entering Ahead") in combination with 35 mph speed advisory plaques to alert motorists of truck activity and to encourage slower travel speeds in the Site vicinity. [MDM and VAI]
- c. Daily Limitations (Not Averages) on Number of Trips [VAI/MDM/Staff]
 - i. 250 [244 - Galvin] trips per day allocated to asphalt plant
 - ii. 150 trips per day allocated to materials processing yard
 - iii. 50 trips per day allocated to remaining uses on the site.
 - iv. Total of 450 trips per day for the site.
- d. Emergency Access.
 - i. Prior to any site clearing the applicant shall provide the Board or its designee copies of emergency access easement documents and evidence that they have been recorded at the Middlesex North Registry of Deeds.

- ii. Prior to any site clearing the applicant shall demonstrate that the emergency access will accommodate emergency service vehicles (including but not limited to road construction detail, turning radii and road slope data).
- iii. Emergency access roads shall meet NFPA -1 and 527 CMR Chapter 18: [WFD]
 - (1) minimum access road widths shall be no less than twenty feet (20');
 - (2) permeable driving surfaces shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with an all-weather driving surface.
- e. Monitoring of trips. [VAI/MDM/Staff/Galvin]
 - i. Applicant shall develop a monitoring program and submit it for Board approval. Board's implementation of such monitoring program may require deposit of funds to the Board to ensure review and comment by Professional Traffic Engineers. Said monitoring program shall include recommendations of the Board's traffic consultant MDM Transportation Consultants' recommendations [MDM March 11, 2015 letter]:
 - (1) **Monthly submittal of certified summary of daily records** of time-stamped trip activity logs (including all truck activity, employee activity, delivery and visitor activity associated with the asphalt plant and materials processing yard).
 - (2) **Baseline Trip Survey.** Applicant shall establish an appropriate "baseline" survey of vehicle trip activity (by vehicle type) at Commerce Way, prior to commencement of operation of the Project, to reflect the range of peak hour and daily trips generated by existing established uses on the Site including the materials processing facility, retail granite product sales, solar farm, and office use. The survey period shall be representative of peak operating seasons for these uses (most likely summertime) and shall include counts over a multi-day period to include weekdays and Saturdays. The combination of existing uses should generate peak hour trip levels that are equal to or less than those assumed in the TIS; variation from these estimates would raise concern regarding traffic operations once the Project becomes operational and would require further evaluation by this Board as to whether to reopen the public hearing to consider imposition of further conditions. The survey will also facilitate measurement of actual trip increases at Commerce Way that are attributed to the Project following opening.
 - (3) **Driveway Traffic Counts.** Turning movement counts (TMCs) for the Commerce Way driveway shall be conducted following commencement of operation of the Project under peak season conditions over a multi-day period to include weekdays and Saturdays to validate projected Build traffic volume conditions used in the TIS. These TMCs would augment the vehicle activity logs maintained by the Applicant to validate peak driveway volumes, vehicle types and directional distribution of trips at Commerce Way under peak operating conditions.

The Board reserves the right to periodically monitor the 7AM to 9AM traffic operations at the intersection of Commerce Way and Groton Road. If such

monitoring reveals evidence that there is condition at that intersection which presents a potential threat to the public safety, the applicant shall be required to pay for police details to regulate traffic at that intersection during the hours of operation that are of concern. This decision shall be made by the Board based on a review of operational experience at the intersection. [Galvin]

- (4) **Video Monitoring.** Applicant shall install and maintain video monitoring equipment on Commerce Way to augment trip activity logs and "peak season" TMC data, which would allow real-time checks of driveway operations, trip levels and patterns relative to log reports and the established "Build" condition traffic projections in the Applicant's TIS.

All traffic coming to this site originating from an off site location other than the Fletcher Quarry for either the purpose of depositing supplies and material or for picking up product, shall enter the site through the Commerce Way entrance and no other. The applicant shall install a high definition CCTV camera with 180 day storage capability to monitor the ingress and egress of vehicles into the site from this entrance. All vehicles shall be provided with a distinctive number printed on fluorescent tape, visible from a distance of 20' which shall be placed at the top center of the trucks windshield. The applicant shall keep a register of all numbers issues to vehicles. The register shall identify the owners and the address of the vehicles and the purpose for using the plant. The Building Commissioner and the Chief of Police shall have access upon 24 hour request to review recordings from this camera for the purpose of verifying compliance with the trip limits specified in this approval. Deviations from the established limits shall be reported to the Board. Failure to comply with the established truck trip limits may result in a suspension or revocation of this special permit. [Galvin]

- f. Site entrance improvements [MDM]
- i. Applicant shall prepare engineering plans with specific lane dimensions, land striping and sign placement that conforms to MUTCD standards for approval by the Board or its designee. Said plans shall address the areas of encroachment illustrated by the VAI turn movement analysis.
 - ii. Applicant shall prepare engineering plans that show at least a 4 foot widening of Groton Road to increase the useable (paved) shoulder areas on the eastbound approach to the driveway to accommodate trucks turning left from the site driveway. If all necessary approvals for such widening are issued, applicant shall construct such widening at its own expense.
- g. Operation of the asphalt plant and materials processing shall not result in stacking of trucks on Rte 40/Groton Road waiting to enter Commerce Way. The Westford Police shall take notice of any such condition and shall immediately report this condition to the Building Commissioner. If the condition cannot be alleviated, or if it develops into a persistent condition the Board shall take notice and may suspend or revoke this special permit. [Galvin]
- h. The applicant represented that a minimum of fifty percent (50%) of the aggregate used in asphalt production will be obtained from the adjacent Fletcher Quarry. This material shall be transported from the proposed internal quarry roads and shall not result in trucks traveling onto Groton Road.

4. Environmental Protection

- a. The applicant shall copy the Planning Board and Board of Health on all correspondence, reports, filings, and/or surveys required by the *310 CMR 7.02 – Air Quality Non-Major Comprehensive Plan Application Transmittal No. X227251, Application No. MBR-09-IND-005, Modified Conditional Approval* (DEP Permit).
- b. Applicant shall post a bond or other financial security, in an amount established by the Board and in a form approved by Town Counsel, to cover the cost of a potential hazardous materials spill on the site. The security shall be renewed prior to any expiration of its term and will be released by the Board upon permanent closure of the facility and certification from DEP that the site does not contain hazardous materials. [Galvin]
- c. Applicant shall immediately report any violations of the DEP regulations or the DEP Permit to the Board or designee. Violations of DEP regulations and Permit may result in the suspension or revocation of the special permit. Opacity of emissions shall not exceed 20%. Emission rate shall not exceed 4.25lbs per hour with a limit of 3.4 tons in one 12 month period. [Galvin]
- d. The Applicant shall add additional odor control equipment to the loading operation that will help to eliminate any odors resulting from the loading of material into trucks. Additionally, odor control additives will be added to the processing operation that will eliminate the asphalt odor from the finished materials thus eliminating odor not only from the processing operation but also from the trucks transporting the material.

Applicant shall use odor control measures to reduce the affect of odor from this plant. Such actions shall be conducted with the approval of the Board of Health for the Town of Westford. Failure to effectively control odor may result in a suspension or revocation of the special permit. [Galvin]

- d. The applicant shall perform a monthly "visolite test" on the baghouse to ensure that there are no broken filters. The Building Commissioner shall be notified in writing within seven days of any failed tests and the action taken to correct the deficiency. Following notification of a failed visolite test, the Building Commissioner or his designee may conduct a visual inspection of the site to ensure that the baghouse is performing properly. [Galvin]
- e. The applicant shall immediately notify the Westford Building Commissioner of any incident in which operations may have caused an increase in emissions over the limits established by the DEP permit. [Galvin]
- f. Should the State Department of Environmental Protection (DEP) not adequately enforce the conditions of approval in *310 CMR 7.02 – Air Quality Non-Major Comprehensive Plan Application Transmittal No. X227251, Application No. MBR-09-IND-005, Modified Conditional Approval* (DEP Permit), the Planning Board hereby incorporates all the conditions of approval so that it has the independent right to enforce the requirements through its Zoning Enforcement Officer or other designee. When the Board's conditions are more limiting than the DEP permit, the more restrictive condition will be enforced by the Board. Applicant shall fund an escrow account to allow the board to hire professionals should they be needed to assist the Board to enforce the following conditions from the DEP Permit.

- i. Specific emission limits and pollution control devices for 4 different emission causing elements of the project (DEP page 6).
- ii. 60,000 tons of asphalt per month/300,000 tons per 12 month period or 1,500 tons per day and not more than 250 vehicle trips per day, whichever is lesser.
- iii. Newport Materials shall conduct a noise survey (during daytime operation), which is in accordance with MassDEP guidelines, to demonstrate the noise impacts from the operation of the equipment are in compliance with Regulations 310 CMR 7.10 and the Bureau of Waste Prevention's Noise Policy No. 90-001. This survey shall be conducted within 120 days of the commencement of continuous operation of the subject equipment. The results shall be submitted to the Planning Board within 20 days of completion of the testing. *If the results demonstrate non-compliance with 310 CMR 7.10, the Board shall take notice and may suspend or revoke this special permit.*
- v. Requirements for testing of emissions with DEP personnel present 120 days after operational;
- vi. Specific performance measures relating to air quality and monitoring of air quality.
- vii. Specific equipment and operational procedures.

Note – the above list of DEP conditions is a summary only, to be supplemented with additional detail.

5. Fire and Life Safety and Hazardous Materials (note emergency access road conditions under Transportation)

- a. The two 30,000 gallon cisterns shall meet all requirements of NFPA-1142. As a condition of approval, a report documenting the sizing of the fire protection cistern should be prepared by a registered fire protection engineer and submitted to the Board. The fire chief should provide comments relative to the cistern and fire alarm system prior to the start of construction. [Westford Fire Department (WFD)/Woodard & Curran]
- b. WFD and its equipment shall be able to access each of the cisterns so that access road(s) are not blocked and so that other WFD vehicles can pass those vehicles accessing the cisterns. [WFD]
- c. The applicant shall provide the Foam Cart shown on the Site Plans throughout the lifetime of the plant's operation. The applicant shall maintain said Foam Cart in good working order and ensure that it is fully supplied. The equipment shall be available for use by the WFD if needed. [WFD/RJA]
- d. Applicant shall provide (at no cost to the Town) OSHA's confined space training for the WFD staff on an annual basis and also provide for re-certification for WFD employees as needed over the lifetime of the asphalt plant's operation. [WFD]
- e. Asphalt Plant shall have an emergency shutdown mechanism and shut off valves from the fuel source to the burner that will shut down operation if there are any malfunctions of the burner, the exhaust fan damper or the baghouse. Should the emergency shutdown be triggered, the Fire Department shall be notified immediately and the Fire Chief or designee shall have the

authority to investigate and inspect the site and shall be allowed to monitor the progress of repairs. [Galvin]

- f. Flammable Combustible Storage for the site shall meet the requirements at a minimum as specified in 527 CMR 9.03. [WFD]
 - i. In accordance with MGL c. 148 § 37, any above ground storage tank of more than 10,000 shall secure a permit from the State Fire Marshal and the local fire chief.
 - ii. Storage of flammable combustible liquids greater than 10,000 shall require a License from the local license authority.
 - iii. Manual shut off valves shall be installed at the #2 Fuel Oil tank and Liquid Asphalt tanks as recommended by the Town of Westford Fire Department within their memo dated October 13, 2009.
- g. On an annual basis, determined by the Fire Chief, the applicant shall provide a detailed briefing to representatives of the Fire Department designated by the Fire Chief with regard to spill containment procedures. The Fire Chief may conduct an inspection of the plant on an annual basis. As part of this inspection the Chief may ensure that all plant personnel understand procedures related to both hazmat containment control and fire suppression. [Galvin]
- h. Keys to the facility shall be placed in a "Knox Box" acceptable to Westford Public Safety personnel. [Galvin]
- i. The applicant shall install a sprinkler system in the furnace area, emergency lighting in all interior spaces, clearly illuminated exit signs within interior spaces of the control room. [Galvin]
- j. Following any malfunction or abnormal condition with regard to emissions equipment, the applicant shall forward a written report to the Building Commissioner reporting such malfunction or abnormal condition, in a manner prescribed by the Commissioner within 15 days of the incident.
- k. For oil Spill Prevention, Control, and Countermeasure (SPCC) plans, any facility that has an oil storage capacity of 1,320 gallons or greater must prepare an SPCC plan. Since the capacity of the No. 2 fuel Oil storage tank is 10,000 gallons, a SPCC plan is required. A copy of the SPCC plan shall be provided to the Board and Town Engineer prior to commencement of the asphalt operations. [Woodard and Curran]
- l. Any breeches in emission controls, fuel storage and containment equipment or fire control issues shall be immediately reported to the Fire Chief and the Building Commissioner. [Galvin]
- m. All storage tanks must be rated at UL 142. Block valves on the containment structure shall be shut when the plant is not being operated. [Galvin]
- n. Applicant acknowledges that they must receive a Hazardous Materials permit from the Board of Health.
- o. Hazardous Materials Data sheets for all material stored at this site shall be provided to the Fire Chief and the Board of Health. An update to these information sheets shall be provided to the Fire Chief and Board of Health forthwith when materials are added to the site. [Galvin]
- p. Zones where dumping, storage or stockpiling of Hazardous Materials are prohibited shall be established on site subject to review by the Town Engineer and Board of Health. These zones

must be clearly marked with posted signs plainly visible.]Galvin]

- q. The proposed asphalt facility shall incorporate all standard and optional controls and safety interlocks Gencor provides. [RJA]
- r. Prior to plant operations and/or occupancy permit the operating procedures, including emergencies (e.g. fire), maintenance program, and hot work procedures shall be developed for the Westford Asphalt Facility to address the safety procedures to avoid or minimize human errors through training and procedures. [RJA]
- s. Prior to plant operations (occupancy permit) a general Hazardous Operations (HAZOP) analysis shall be prepared for the site. These elements should be completed prior to the plant operations. [RJA]
- t. If the exhaust system for the conveyor belt, top of the silo and bottom of the silo, are not operational the manufacturing process shall stop until remedied. [RJA]

6. Sound

- a. No person shall operate or cause to be operated any source of sound in a manner that creates a sound level which exceeds 70dBA or 10dBA above ambient, whichever is lower when measured at the boundary of the receiving land use (except as necessary for tree cutting and other required construction activities). [note – this condition may change if Board approves waiver request]
- b. Applicant shall include the Board or its designee on the post operational sound analysis report and field testing. Applicant shall provide funding for the Board's peer reviewer to review said reports and field testing.
- c. Applicant shall modify plan details of the asphalt facility manufacturing elements to include the enclosures and mufflers around certain sound sources as detailed in the CTA report dated _____. Applicant shall construct the sound attenuation barrier as specified by CTA and applications materials. [note – this condition may change if Board approves waiver request]
- d. Applicant shall revise the sound report and resubmit to the Board for review to include all rock crushers on the site so that the Board can determine the sound levels at all property lines. Applicant shall provide escrow funding for the Town's peer reviewer to examine the results of such sound modeling.
- e. Applicant shall annually conduct a sound survey at the five closest residential receptors (list property addresses). The survey shall measure ambient sound levels prior to commencement of operations for the day and shall measure sound levels after full operation of the plant commences for the day. If the survey demonstrates more than a --- dBA increase of sound level at any residential property boundary, the Board shall take notice and may suspend or revoke this special permit.

7. Rescinding Subdivision

Note – to be discussed at the hearing.

8. Voluntary Mitigation offered by the Applicant March 31, 2010 letter from Douglas Deschenes, Esq.

The Board hereby accepts and incorporates the mitigation measures proposed in the March 31, 2010 letter and April 1, 2010 email correspondence from Applicant's counsel Douglas Deschenes, Esq.

9. Stormwater Management

- a. Applicant shall introduce appropriate site measures to prevent sediment from being tracked into Groton Road and to provide the Board with details on those proposed measures. [Town Engineer]
- b. A draft maintenance agreement is required as part of the Stormwater Management Permit application. The agreement is required to comply with the maintenance requirements of the Stormwater Management Regulations including: Sections 6.H, 6.K and 12.0. The final maintenance agreement shall be submitted to the Town for review and approval prior to the completion of construction. The maintenance agreement shall be recorded at the Middlesex North Registry of Deeds once approved by the Town. [Town Engineer]
- c. As-built record drawings are required to be completed in accordance with Section 6.H of the Stormwater Management Regulations upon completion of the project. The Engineer of Record shall provide a written certification stating that the project was constructed in accordance with the approved design plans. [Town Engineer]
- d. The applicant shall comply with construction inspection requirements outlined in Section 11.0 and the continuing inspection and maintenance requirements in Section 12.0 of the Westford Stormwater Management Regulations. [Town Engineer]
- e. Applicant shall protect the infiltration basin and other structural stormwater Best Management Practices (BMPs) during construction in order to prevent a reduction in the long term infiltration capacity of the soil. All stormwater BMPs shall be cleaned of any silt and sediment once construction is complete and the project has been fully stabilized. This may require the removal and replacement of soil to make certain that the infiltration rate of the soil is met. [Town Engineer]
- f. The final stormwater operation and maintenance plan (O&M) shall be updated to include a simplified site plan that would highlight the location of the various structural pollutant controls and stormwater BMPs outlined in the O&M Plan. [Town Engineer]
- g. The applicant shall comply with the O&M in perpetuity and as outlined in the final maintenance agreement. [Town Engineer]
- h. Applicant shall demonstrate that post construction drainage areas closely match the drainage areas shown on the post-development drainage map submitted. [Town Engineer]
- i. The Stormwater Management Permit decision shall reference the SWPPP prepared for the project and require compliance with that SWPPP until the project is fully stabilized. Prior to commencement of any site clearing or construction activities, the applicant shall provide a copy of the final Stormwater Pollution Prevention Plan (SWPPP) to the Engineering Department. The SWPPP shall be received no later than the required pre-construction meeting. [Town Engineer]

- j. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, the Applicant shall inspect, clean and repair (if necessary) to the satisfaction of the Engineering Department the existing stormwater management system. [Town Engineer]
- k. The Applicant shall conduct soil testing within the footprint of each subsurface infiltration system and within the stilling basin prior to the start of construction and in the presence of the Engineering Department to verify proposed design assumptions and confirm compliance with the Stormwater Standards. [Town Engineer]
- l. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, the Design Engineer shall certify that the proposed subsurface infiltration system was installed in accordance with the manufacturer's specifications. [Town Engineer]
- m. The Applicant shall provide copies of the NPDES Construction General Permit to the Engineering Department no later than the required Preconstruction Meeting. Once the contractor is selected, the USEPA Notice of Intent (NOI) for construction activities regulated under the Construction General Permit and Stormwater Pollution Prevention Plan should be provided to the Town Engineer prior to the start of construction. [Town Engineer/Woodard & Curran]
- n. The Applicant shall provide a copy of the Long-Term Pollution Prevention Plan to the Engineering Department no later than the required Preconstruction Meeting. [Town Engineer]
- o. The Applicant shall protect the subsurface infiltration systems and stilling basin during the construction process to prevent a reduction in the long term infiltration capacity of the soil. Once construction is complete, the Applicant shall clean these stormwater BMPs of any silt and sediment. At the discretion of the Engineering Department, this may require the removal and replacement of soil to make certain that the infiltration rate of the soil is met. [Town Engineer]
- p. The Applicant shall combine the Operation and Maintenance (O&M) Plan and Long-Term Pollution Prevention Plan into a bound letter-sized document that shall be provided to the Owner and Operator, and the Applicant shall comply with this document in perpetuity. This document shall also include a simplified site plan that highlights the location of the various structural pollutant controls and stormwater BMPs. This document shall apply to post-construction management of the site and shall be separate from the required SWPPP. [Town Engineer]
- q. The O&M Plan shall be recorded with the decision at the Northern Middlesex Registry of Deeds. Compliance with the O&M Plan shall be a condition of approval. [Woodard & Curran]
- r. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, the applicant shall have an as-built plan of the site and stormwater systems and provide an engineer's certification stating that the project was constructed in accordance with the approved design plans. The as-built plan shall conform to the specifications provided in section 218-25 of Westford's Subdivision Rules and Regulations and section 6.H of the Westford Stormwater Management Regulations upon completion of the project. [Town Engineer]
- s. An asphalt plant with a point source discharge to a navigable water body must submit a Notice

of Intent (NOI) to the USEPA sixty days prior to discharge in accordance with Sector D (Asphalt Paving and Roofing Materials and Lubricant Manufacturers) of USEPA's Multi Sector General Permit for Industrial Activities (MSGP). Prior to submitting the NOI, the facility must prepare an industrial stormwater pollution prevention plan (SWPPP) that describes potential pollutant sources; structural and non-structural best management practices (BMPs); and other stormwater management procedures such as preventive maintenance, good housekeeping, pollution prevention team, spill prevention and response, training, monthly visual inspections, record-keeping, and reporting. This NOI shall be submitted as draft to the Town for review prior to submission to the USEPA. [Woodard & Curran]

- t. The applicant shall not be allowed to pave any additional areas on-site without prior SPR and MCP approvals from the Planning Board. [Woodard & Curran]

10. General conditions of approval

- a. Once the contractor is selected, a construction schedule shall be provided to the Building Commissioner for review. This schedule should be updated on a monthly basis and should address the implementation of erosion control measures during the course of construction. [Woodard & Curran]
- b. Any fill used in connection with this project shall be clean fill. Any fill shall contain no tree stumps, trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
- c. As used herein, the term "Applicant" shall mean the Applicant, its heirs, successors and assigns. The term "Board" as set forth herein shall mean the Westford Planning Board. The provision of this approval shall apply to and be binding upon the Applicant, its employees and all successors and assigns in interest or control.
- d. All work is to be done in accordance with the aforementioned record plans. Any changes, revisions or modifications to the plans as approved herein shall require approval by the Planning Board. Non-substantive changes, as determined by the Board, may be approved by the Board at a regularly scheduled public meeting. Substantive changes may be approved by the Board through a public hearing process.
- e. The applicant is reminded to contact the Building Commissioner to determine sign permitting requirements for proposed facilities.
- f. Prior to commencing any construction or site work, the applicant shall record this decision with the Middlesex North Registry of Deeds and shall provide evidence of such recording to the Planning Board.
- g. The Special Permits shall lapse after two (2) years from the grant hereof if a substantial use has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.
- h. All landscaping features, structures and areas shall be properly maintained. Dead shrubs or trees shall be replaced within one growing season.

- i. The Limits of Work, as shown on the approved plans, shall be staked out in the field by a Professional Land Surveyor. Orange construction fencing (or an approved equivalent) shall be installed at the Limits of Work. All trees within the Limits of Work that are to be retained during the construction process shall be properly flagged to avoid damage or removal during the construction process. Such flags shall be installed prior to any site clearing. The Limits of Work and erosion control measures shall be inspected and approved by the Town Planner prior to commencing any additional site work.
- j. Retaining walls over four (4) feet high shall be reviewed and stamped by a Structural Engineer.
- k. The Applicant acknowledges that this approval is subject to completion of all necessary filings and any order of conditions issued for this project by the Town of Westford Conservation Commission. In addition, if any of the approved site features are amended by the Conservation Commission in a way that would require an amendment, then the Applicant shall submit these changes to the Planning Board for their review and approval.
- l. Prior to commencement of plant operations and/ or any issuance of a Certificate of Occupancy, all required legal documents including but not limited to covenants, easements, agreements, monitoring agreements shall be submitted to the Town Planner and Town Counsel for review and approval. It shall be the responsibility of the Applicant to pay all legal cost associated with the review of this decision and documents associated with this decision.
- m. Any blasting activity at the site must conform to the requirements of the Town's Fire Department officials, the State Fire Marshall's Office and any other appropriate regulatory official. Additionally the Contractor shall be responsible for seismograph monitoring, notification to neighbors within the immediate work area prior to blasting and posting a fire detail on the site. If blasting is required for the construction of the site use the following steps will be taken to monitor/rectify any potential damage as a result of the blasting:
 - i. The Applicant shall provide documented inspections, i.e. videotaping, of any foundations and pools within 400' of any expected blast area prior to the start of any blasting;
 - ii. The Applicant shall provide pre and post blasting water testing for all residents within 400' of any expected blast area in the subject subdivision prior to the start of any blasting. Water quality, including radon testing, and a specific capacity/short term pumping test shall be included in this testing;
 - iii. The Applicant or their hired contractors, shall notify those residents within 400' of any expected blast area, when blasting will begin on the site and will again notify them when all blasting is complete;
 - iv. Blasting hours will be from 8:00 a.m. to 4:00 p.m., weekdays only;
 - v. The Applicant shall rectify those problems that are proven to be a result of blasting on the subject subdivision, i.e. foundation cracking and deterioration in water quality;
 - vi. The use of any perchlorate blasting material is prohibited;
 - vii. Hours of operations pertaining to air hammering or similar practices shall be limited to Weekdays between the hours of 8:00AM through 4:00PM.

- n. Within 60 days of the issuance of this decision and prior to commencement of plant operations and/or issuance of any building permits, the applicant shall provide the Permitting Department with the recordable Mylar plan set (sheets to be determined by Planning Staff), one (1) full Mylar plan set, five (5) sets of full sized and two (2) sets of reduced copies of the final *endorsed* plan set, an electronic copy of the *endorsed* plan set, as well as a digital copy of the final set of approved plans. Final plans shall be received no later than the required pre-construction meeting. The digital copy of the final set of approved plans must follow the five requirements listed below:
- i. All plans and specifications must be submitted on electronic media (CD or DVD_ROM using an IBM-PC or compatible file format). Acceptable file formats include: AutoCAD *.dwg, AutoCAD *.dxf, ArcView *.shp, or ArcGIS Geodatabase *.mdb. The files must be identical to the printed plan and contain all information included on the written plan.
 - ii. All digital mapping data must be delivered in the Massachusetts State Plane Coordinate system with a horizontal datum of NAD83 and vertical datum of NGVD88.
 - iii. Each feature type must be organized in the CAD or GIS data structure as a separate layer using logical layer names. For example, there must be separate CAD layers for buildings, roads, parcel lines, and wetlands. Having all these features in a single CAD layer or GIS file will not be accepted.
 - iv. Documentation of the data format must be provided with a description of the CAD layers and list of the types of features placed in each layer. Submission of multiple files must also include a list of the files and their purpose.
 - v. The data submitted must include documentation on the method used to gather the data, the name of the person(s) responsible for preparing the data, contact information, an estimation of the horizontal and vertical accuracy, and the date of data capture. All media shall be free from any and all defects and viruses, and labeled as to their contents.
- o. Any minor revisions to the design of any drainage control measures shall henceforth be subject to the approval of the Town Engineer and the Town Planner. Significant modifications will require review by the Planning Board in accordance with condition 10.d.
- p. Impervious areas associated with the development (such as building and pavement areas) shall not exceed those sizes used in the stormwater calculations and as shown on the plans unless reviewed and approved by the Town Engineer.
- q. Prior to the commencement of any construction or site work the Applicant shall initiate a pre-construction meeting with the Engineering Department, Planning Department and other relevant Town Departments and Town Staff. All relevant contractors and subcontractors involved with site preparation/site construction activities shall attend this meeting. This approval with conditions shall be reviewed by all parties involved.

EVERETT V. OLSEN, Jr., M.B.A.
Superintendent of Schools

KERRY CLERY, M.Ed.
Assistant Superintendent of
Curriculum & Instruction



COURTNEY L. MORAN, M.Ed.
Director of Pupil Services

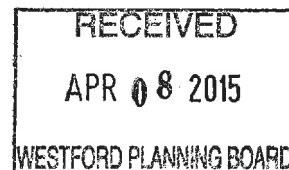
KATHLEEN AUTH
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April 8, 2015

To: Westford Planning Board

From: Everett V. Olsen, Jr., Superintendent of Schools

I must express my concern over the application by Newport Materials for a proposed asphalt plant on Route 40. My concern is focused on the potential health impact on our students while in attendance at the Miller School and in their homes, many of which, are in close proximity to the proposed asphalt plant location.

At the present time, the parents of 41 Miller School students have informed us that their child has been diagnosed with asthma. Literature regarding asphalt fumes indicates that the fumes can cause irritation of the lungs, eyes and nose. In addition to the possible health effects of asphalt fumes, I am concerned over the possible odor that may affect instruction during the school day. There are many warm school days in the spring and fall months and if classroom teachers have to close windows due to any offensive odor, classrooms will become uncomfortably warm, which will detrimentally impact the learning environment.

I wish to thank you for considering my concerns over the location of the proposed asphalt plant.

TO: Westford Planning Board
Westford Zoning Board of Appeals

FROM: Route 40 Clean Air Coalition
route40cleanaircoalition@gmail.com

DATE: 4/6/15

RE: ASPHALT PLANT TRANSPORTATION IMPACT ASSESSMENT

We write to highlight some of the errors, omissions and findings in the Applicant's own Transportation Impact Assessment (TIA) dated February 2015 by Vanasse & Associates, Inc (Vanasse). We believe that these issues arising from the applicant's own consultant provide ample basis of the Planning Board and Zoning Board (ZBA) to deny the applications now before them.

Withheld Data Files

Both the Planning Board and the ZBA know that we have requested the actual data files and the sources for detailed assumptions be provided to us so that we could review them. At its 3/31/15 meeting, the ZBA asked the applicant whether it would do so. The applicant refused even though it provided similar information back in August of 2009. This is unfortunate. Without the data files and the methodological basis for the assumptions used, the TIA is suspect. Let us give you one example.

Vanasse estimates that of the 250 truck trips allowed to and from the site during a single workday, only 37 of those trips (roughly 15%) will occur during the morning peak-hour. From this hypothesis, it then bases several conclusions regarding the impact of this traffic on the morning rush hour along Route 40. Where did this assumption come from? Vanasse did NOT document whether it surveyed other manufacturers of paving materials to see when surrounding towns and contractors are likely to send trucks for pick up of paving material from the site. Rather Vanasse simply used an estimate that the applicant provided even though the applicant has every reason to under-estimate the number of trucks at the morning peak to avoid a bottleneck. TIA at p. 21. ("Peak-hour traffic volume projections for the Project were derived from the daily trip estimates and operational information provided by the Project proponent.") If, rather than 15%, 20% of the permitted trucks come and go during the morning peak, then the modeling and congestion at the intersection of Groton Road and Commerce Way could be much worse. But we will never know based on the withheld data.

Incorrect Assumptions

Obviously, one of the key assumptions in a study like this one is what the speed limit is on the roads at or near the site. The TIA states that the posted speed limit on Groton Road is 35 mph. It builds on this assumption, noting that it has examined sight lines for up to 45 mph (ten mph above the "posted" speed limit). TIA at p. 2. This representation of the posted speed limit is plainly incorrect. While the posted speed limit on Route 40 in Chelmsford is a reduced 35 mph, that ends at the town line and the speed limit on Route 40 in Westford is the normal 40 mph on such roads. Since trucks will be exiting the project on Commerce Way at a stop sign and turning left across traffic onto Route 40 towards Route 3, one has to ask how long it takes for a large asphalt-hauling truck to go from a standing stop, turn, and accelerate to 40 mph? Although we are not traffic consultants, we think it would take a little while. So, we believe the project will almost certainly degrade the speed and flow of traffic traveling East along Route 40, which is precisely the way many Westford residents get to Route 3 each and every morning. Again, the point here is that the speed limit for traffic on Route 40 has been represented as 35 mph when, in fact, it is 40 mph. Attached is a copy of an email from Town Engineer Paul Starratt confirming this fact.

Failed Intersections

The most important conclusion of the TIA is that the Groton Road/Oak Hill Road and Groton Road/Commerce Way intersections are both already **failed intersections** with levels of service that are **unacceptable** during peak hours. TIA at pp. 7-8. The report also notes that there are neither sidewalks nor bike lanes or bike paths in this section of Groton Road. TIA at p.3.

The Groton Road/Oak Hill Road intersection has already been the scene of a **fatal accident** in just the last three years. TIA at p.4. It is rated as one of the worst 100 intersections in the region. TIA at p.4. The TIA notes that operating conditions at the Groton Road/Oak Hill Road intersection get a grade of F whereas a grade of at least D is required to be deemed acceptable:

Critical movements at the Groton Road/Oak Hill Road intersection were shown to operate under constrained conditions (defined as a level-of-service (LOS) "F") during the peak hours under 2015 Existing conditions independent of the Project.

TIA at p. 7. Although there are suggestions that this intersection will eventually be signalized there is currently no budgeted commitment by the Town or the MassDOT to do so.

Even more important than Groton Road/Oak Hill Road are the existing, failed conditions at Groton Road/Commerce Way, through which virtually all of the traffic for this Project will pass. Even before one adds the proposed additional traffic from this Project, the existing conditions for vehicles trying to turn left out of Commerce Way onto Groton Road have to wait too long during peak times:

Vehicles exiting Commerce Way (the driveway to 540 Groton Road) at its intersection with Groton Road were shown to operate at LOS "E"/"F" during the weekday morning peak-hour independent of the Project as a result of the relatively large volume of conflicting traffic along Groton Road. With the addition of Project-related traffic, operating conditions for vehicles exiting Commerce Way were shown to degrade from LOS "D" to LOS "E" during the weekday evening peak hour and to continue to operate at LOS "F" during the weekday morning peak-hour ...

TIA at p. 8. The modeled traffic for this study presupposed that the Project would add 37 vehicle trips during the morning peak-hour and 25 vehicle trips during the evening peak-hour. TIA at p. 2.

What does all of this mean to real people like us? Let us put it bluntly. These two intersections are already not functioning acceptably. During the morning rush hour and the evening rush hour, traffic trying to turn onto Groton Road across a line of traffic on Groton Road already has to wait an unacceptably long time. To these admittedly bad conditions, the Project proposes to add at least 37 additional trucks in the morning and 25 trucks in the evening. What is likely to happen at these two locations? Well, initially, trucks trying to exit the Project are going to have to wait and wait and wait to turn left coming out of Commerce Way and onto Groton Road. They will line up in queues of 2-4 trucks, TIA at p. 8, waiting and waiting to make that left hand turn across oncoming traffic. There will be no signal there to give them any relief. Eventually, they are going to get impatient, inch out, and take chances turning onto Groton Road. One can readily predict, given human nature, that there will be accidents when an impatient truck driver coming from this Project miscalculates. In the resulting truck-automobile accident, who is more likely to be seriously injured? The truck driver or the Westford mom driving her kids to school or home from soccer practice?

We think it is simply irrational to approve a Project that has to use a failed intersection for virtually all of its considerable traffic without requiring that the Project take steps that improve the intersection so that it is no longer failing (e.g., gets a grade of "D" or better). There has already been a fatal accident at Groton Road and Oak Hill Road. If you approve this Project without requiring that the Groton Road/Commerce Way intersection be improved so that it does not fail during rush hours, just how long will it take before there is a fatal accident at Commerce Way?

Traffic Limits, Monitoring and Reporting

In preparing the TIA, Vanasse took the proposed cap of 250 vehicle trips per day to and from this Project and prepared their model by allocating those vehicle trips among the various types of trips (liquid asphalt, RAP, Imported Aggregate, Exported Product, Fuel Oil, and Employees). TIA at p. 6. All trips, with the exception of employee trips were assumed to be trucks. Only 64 trucks (128 vehicle trips) were allocated to Exported Product (sales of hot top). TIA at p.6.

If either the Planning Board or the ZBA were inclined to approve this project, **which we hope is NOT the case**, the respective Boards should not only require that the overall vehicle trips be capped at 250, but also require that the subcategories of vehicle trips be capped at the numbers set forth in the report. This ensures that the Project operates in the manner in which this traffic study has been modeled.

In addition, because the traffic impact during rush hour (peak-hours) is so problematic, the respective Boards should require that all truck traffic that does not constitute Exported Product be confined to off-peak hours. The Applicant can readily require of its employees, vendors and suppliers (liquid asphalt, RAP, Imported Aggregate, Fuel Oil, and Employees) that they come and go at non-peak times as a way of mitigating peak hour impacts. Customers for hot top however need it when they need it so we are not suggesting that they be restricted from the peak-hours.

Although the TIA proposes various ways of monitoring the traffic, Vanasse fails to suggest the one foolproof means of monitoring the traffic, a security camera that is fully functional and can be reviewed if there is any question regarding what is happening. In this day and age when cameras are everywhere, there should be cameras installed at the entrance to the site and at the intersection of Commerce Way and Groton Road, as well as any and all possible access/egress points.

Finally, monitoring is not enough. There must be swift and certain consequences if the monitoring shows that the permit has been violated, including the suspension and/or loss of the permit.

Thank you for considering our thoughts and requests. Once again, for the many reasons noted above, we request the board(s) deny these applications.

From: Paul Starratt [<mailto:pstarratt@westfordma.gov>]
Sent: Tuesday, March 17, 2015 4:57 PM
To: John Mangiaratti
Cc: Justin Howard; Jeremy Downs
Subject: Re: official speed limit on groton road

John:

I have cc'd Justin Howard at NMCOG since you both asked the same question within minutes of each other. This was also a topic of discussion at last night's Planning Board meeting during the Newport Materials public hearing for the proposed asphalt plant.

MGL Chapter 90, Section 18 requires that the posting of numerical speed limit signs be based on an engineering study as approved by MassDOT and the Registry of Motor Vehicles, and subsequently adopted by the local jurisdiction. Since no such study has been conducted, approved or adopted along Groton Road, MGL Chapter 90, Section 17 applies by default.

Section 17 states that, 'it shall be prima facie evidence of a rate of speed greater than is reasonable and proper...if a motor vehicle is operated on any other way outside a thickly settled or business district at a rate of speed exceeding forty miles miles per hour...' I understand this to mean that unless it is otherwise proven to be incorrect by an engineering study, the speed limit near the Newport Material's driveway is forty miles per hour. This is further supported by the presence of ample sight distance along this straight section of road.

For your reference, I have attached a well written MassDOT Tech Report on Speed Limits & Speed Limit Setting.

Justin also asked about the speed limit on Boston Road between Littleton Road and Interstate 495. This is a State Layout, so we have asked District 3 to provide us with the results of any speed studies they have conducted.

Paul Starratt, P.E.
Town Engineer
Town of Westford
28 North Street
Westford, MA 01886
Ph: 978-360-0498
Fx: 978-399-2739
pstarratt@westfordma.gov

John Mangiaratti writes:

Hi Paul

What is the official speed limit on Groton Road from Oak Hill Road to the Chelmsford line?

thanks

John


John S. Mangiaratti
Westford Assistant Town Manager
jmangiaratti@westfordma.gov
978-692-5501

From:  Renny Clark <clarkr03@gmail.com> Mon, Apr 06, 2015 4:33:22 PM 

Subject: Please Do NOT reconsider Newport Materials Asphalt Plant Request

To:  **Jeffrey Morrisette**

Cc:  mgreen@westfordma.gov  mlewin@westfordma.gov
 dgalvin@westfordma.gov  khollister@westfordma.gov
 Jody Phillips-Clark <jpclark4@gmail.com>

Attachments:  Attach0.html / Uploaded File (5K)

Dear Mr. Morrisette,

I would like to request that this email be part of the public record, and forwarded to all members of the Zoning Board of Appeals (ZBA) ASAP.

I respectfully request that the Wesford, MA ZBA **not** reconsider their "NO" vote to Newport's requests that were voted on at the last ZBA meeting. The board heard from the people in attendance, and then voted 'no' to Newport's request for an additional principal use variance and 'no' to an extension pre-existing non-conforming use Special permit.

There is no reason to reconsider the vote and it is my urgent request that the ZBA stand by their original vote. If for any reason the ZBA thinks they should reconsider the vote, then they should also re-open the Public Hearing. The ZBA cut short the discussion when there were people waiting to be heard.

The proposed asphalt plant would result in the release of tons of chemicals into the air, including cancer causing pollutants, and increase noise pollution in a highly residential area. Additionally, property values would suffer. These concomitant effects are unacceptable in my view.




Please uphold your "NO" vote to preserve the quality of life for those Westford residents who live in the Rt. 40 area, and those that use Rt. 40 on a daily basis.

Sincerely yours,












Warren and Johanna Clark






6 Lakeside Terrace

Westford, MA 10886

From:  Joe Gabriel <1joegabe1@gmail.com> Sat, Apr 04, 2015 7:11:38 PM  

Subject: Westford Asphalt Plan: Just Say No

To:  shazelton@westfordma.gov  kross@westfordma.gov
 asweet@westfordma.gov  dsiriani@westfordma.gov
 jsullivan@westfordma.gov  mgreen@westfordma.gov
 mlewin@westfordma.gov  khollister@westfordma.gov
 dgalvin@westfordma.gov  zba@westfordma.gov
 dearl@westfordma.gov

Cc:  **Jeffrey Morrisette**  ckluchman@westfordma.gov
 jross@westfordma.gov  jmangiaratti@westfordma.gov
 "joegabe@comcast.net" <joegabe@comcast.net>
 Carol Ann Gabriel <carol.ann.gabriel@oracle.com>

Town Selectman, Planning Board and ZBA members,

Thank you for all that you do to make Westford one of the best towns in the state of Massachusetts. As a resident for almost 23 years, we've seen tremendous growth and change in the town. The people of this community are passionate about maintaining and preserving the character of this community. We all experience this enthusiasm at Town Meetings and through the many conversations we have with each other at our churches, sporting events and other informal gatherings.

With regards to the proposed Asphalt Plant, I would be surprised if you have heard any positive support from community members or Westford families for this proposal. These are the people who will be impacted the most if this proposal is approved. The recent editorial in the April 2nd edition of the Westford Eagle summed up all the reasons why this is not a good investment for the town of Westford: the proximity of the plant to neighborhoods, schools and daycare facilities, the traffic impact and more importantly for those that live close by, the potential decline in property value. It's ridiculous to think that the town's master plan does not permit drive-through windows but allow an asphalt manufacturing plant to call Westford home.

I urge you to consider the precedent you may set for other businesses and property owners if you allow this proposal to pass. The interpretation of light manufacturing and multi-purpose use on a property could create similar "opportunities" on other properties throughout the town of Westford.

Additionally, town counsel and Judge Sands have made it clear that this is YOUR decision, not Newport's nor the courts. I am confident that you will not be distracted or deterred from threats and "bullying" such as those made by Attorney O'Reilly in his March 30 correspondence with the town, eg. several statements of "...Newport is entitled to approvals from the Planning Board and ZBA...".

Lastly, ZBA's recent decision to re-open the public hearing on this matter is egregious. There was no new information presented in the letters sent to the ZBA on the 30th of March and the vote by the board to re-open happened extremely quickly, before debate amongst board members could occur. We believe it is in the best interest of the boards to reevaluate the proceedings from this meeting and reconsider not reopening the public hearing.

Sincerely,
Joe Gabriel & Family
3 Fernwood Drive

April 8, 2015

Dear Town of Westford, selectman, ZBA and Planning Board,

I am writing this letter as a concerned mother, resident of Westford and Pediatric Nurse Practitioner. I have many concerns regarding the asphalt plant in Westford. Here are a few that I feel need consideration.

My first concern is in regards to the air quality of the town and in relation to the location of two Westford schools. Asthma is a concern of many children in Westford, including my own child. Dust, mites, pollen, smells or fumes from perfumes, and simple pollutants can trigger asthma symptoms in asthmatic patients. I am concerned that although the EPA report states that the air quality of this plant is safe, I am unsure that the truck and burning asphalt pollution, chemicals, sediment and settling particles in the air will not cause harm to our developing children and will likely trigger asthma symptoms. I do not feel that an EPA report can rule out an increase in asthma symptoms for asthmatic children or prevent a life threatening asthma exacerbation in one or many of these children. The quality of life for these children will decrease as their symptoms increase. More exacerbations means missed class, missed school, poor performance in school as well as lowered test scores. Overall quality of life will decrease dramatically with an increase in air pollution in the town, as in most cities as was as reported in other towns with asphalt plants. What will we do to accommodate these children when they are ill? Please consider the clean air and green living that Westford stands for. Think of our little children, so close to the ground where the settled particles lay, think of their lungs and the amazing energy that they have for life, for running and playing outside. Please allow the children to have clean air.

The next concern that I have is noise. At the Planning Board meeting, noise was discussed. One of the residents asked the board and expert panel how noise will affect the school. The expert stated that the amount of noise that will travel to the school will not cause speech interruption. They stated that this meant that the children and teachers will not have any difficulty hearing one another while talking in a normal tone in the classroom. While this sounded promising, one question remains... will this sound be heard in the classroom while it is silent? The noise expert at the planning board meeting stated that there was no data to confirm or deny that there would be interruption in the classroom while there was no chatter going on. They do not know how much interruption of thought or how much interruption of learning that the plant will cause. Does this mean that there is a chance that while the students are working quietly or while they are taking MCAS or other testing that they may hear the rumble of trucks, the crushing of rock, the dumping of asphalt? I believe that it does. If they did not study this, then we cannot assume that it will not affect the children at the Miller and Nabnasset schools that are less than ½ mile and 1 mile away. There is a large number of children with sensory disabilities, with attention disorders and other medical diagnoses that cause difficulty with concentration in a regular classroom. Will they have even more difficulty if more noise is heard? How will we accommodate these children? How will we protect them?

One of the reasons we moved to this town because of the school system. If the town allows this plant to be built so close to the schools, many families will not want to move here, families will leave town and the school system will suffer, test scores will drop and Westford will no longer be a desirable town. I attended the School Committee meeting this past week and the asphalt plant was brought up. The school committee and superintendent expressed their concerns with the plant as well. Please consider their input as this town's success has much to do with the schools here and because of the school committee, dedicated teachers and school administration. Please do not disregard their opinions.

The integrity of the schools, the town and of the reputation that has taken years to build is at stake. Westford will not stand above other towns if the plant is developed. Westford will become just another town.

Please. Please consider the children of this town, their health and their bodies. They are our future.

Sincerely,


Kimberly Liner, PNP

9 Tenney Road

From:  Brant Berglund <brantberglund@gmail.com> Wed, Apr 08, 2015 3:59:36 PM 

Subject: For Public Record- Property Value Concerns Around Asphalt Plant

To:  **Jeffrey Morrisette**  mgreen@westfordma.gov
 mlewin@westfordma.gov  khollister@westfordma.gov
 dgalvin@westfordma.gov  kross@westfordma.gov
 asweet@westfordma.gov  dsiriani@westfordma.gov
 jsullivan@westfordma.gov  jross@westfordma.gov
 shazelton@westfordma.gov

Attachments:  Attach0.html / Uploaded File (4K)

For the Public Record-

I sincerely request that the planning board, prior to voting, consider the impact on Property Values in Westford. There has been zero discussion around this, and meeting topicality has not allowed for it to be brought forth.

If you examine the property values around existing asphalt plants, you will find that they have all dropped, seemingly on average between 15%-30% from various sites around the country.

Looking at a plant that is in Pineola, North Carolina, average values of homes have dropped 27%.
<http://www.bredl.org/air/flyers/Pineola/index.html>

Additionally, one contention in a denial of an asphalt plant application by a Planning and Zoning Board in Lisbon NH/Sugar Hill NH was indeed property value damage/depreciation. Here is a letter detailing what was prepared by their real estate expert:
<http://stoppresbyasphaltplant.org/TaxImplicationsUpdate32515.phtml>

In general the case in Lisbon/Sugar Hill NH needs to be closely examined. The application was denied there based off:

Potential Health Risks:
<http://stoppresbyasphaltplant.org/TaxImplicationsUpdate32515.phtml>

Damage to property values (:
<http://www.bredl.org/air/flyers/Pineola/index.html>

General Operational concerns:




<http://stoppresbyasphaltplant.org/GeneralAsphaltInfo.phtml>


In general, if there is not enough information present to ensure property values, health, and quality of life cannot be effected to safely approve this application prior to the

For a town that still does not have a food based drive through business due to it's dedication to the standards at the town core, you simply **cannot** rush to approval of something as drastic as an asphalt plant simply because of an imposed deadline.

More litigation is still far better than setting a dangerous precedent that Westford is disregarding it's residential nature and returning to the industrial nature of the late 1800s.

Thanks for your continued diligence in this and all matters in Westford,
Brant Berglund
Fernwood Drive

From:  Brant Berglund <brantberglund@gmail.com> Fri, Apr 10, 2015 10:25:18 AM 
Subject: Re: For Public Record- Property Value Concerns Around Asphalt Plant
To:  **Jeffrey Morrisette**

Attachments:  Attach0.html / Uploaded File (12K)

Jeff,
Greatly appreciate the opportunity to correct. Also fixed my sentence fragment in the middle of the email. I was racing to get it to you by 4. Updated below highlighted in green.

That was the cutoff for public record material for next weeks hearings, correct?

Thanks again for you work and diligence.

On Thu, Apr 9, 2015 at 3:22 PM, Jeffrey Morrisette <jmorrisette@westfordma.gov> wrote:

Hi Brant:

You may want to consider checking the link for the Potential Health Risks, as it seems to be a repeat of the Tax Implications. Thank you.

Jeff

Jeffrey Morrisette
Town Planner
Town of Westford
55 Main Street
Westford, MA 01886
jmorrisette@westfordma.gov
Telephone: [978.692.5524](tel:978.692.5524)
Facsimile: [978.399.2732](tel:978.399.2732)

Brant Berglund <brantberglund@gmail.com> on Wednesday, April 08, 2015 at 3:59 PM -0400 wrote:
Looking at a plant that is in Pineola, North Carolina, average values of homes have dropped 27%.
<http://www.bredl.org/air/flyers/Pineola/index.html>

Additionally, one contention in a denial of an asphalt plant application by a Planning and Zoning Board in Lisbon NH/Sugar Hill NH was indeed property value damage/depreciation. Here is a letter detailing what was prepared by their real estate expert:

<http://stoppresbyasphaltplant.org/TaxImplicationsUpdate32515.phtml>

In general the case in Lisbon/Sugar Hill NH needs to be closely examined. The application was denied there based off:

Potential Health Risks:

<http://stoppresbyasphaltplant.org/Health.phtml>

Damage to property values:

<http://www.bredl.org/air/flyers/Pineola/index.html>

General Operational concerns:

<http://stoppresbyasphaltplant.org/GeneralAsphaltInfo.phtml>

In general, if there is not enough information present to ensure property values health, and quality of life will not be effected to safely approve this application prior to the imposed deadline, you must deny the application. The by-laws and zoning laws are designed to be rigid, and protect the town and it's residents in these situations.

For a town that still does not have a food based drive through business due to it's dedication to the standards at the town core, you simply **cannot** rush to approval of something as drastic as an asphalt plant simply because of an imposed deadline.

More litigation is still far better than setting a dangerous precedent that Westford is disregarding it's residential nature and returning to the industrial nature of the late 1800s.

Thanks for your continued diligence in this and all matters in Westford,

Brant Berglund
Fernwood Drive

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Health Issues with an Asphalt Plant Nearby

Here are some short quotes and abstracts from articles referencing the health problems that occur with working, and/or living near an Asphalt Plant.

Asphalt and Diesel Exhaust Fumes

" Over a half-million workers are exposed to fumes from asphalt, a petroleum product used extensively in road paving, roofing, siding, and concrete work. Health effects from exposure to asphalt fumes include headache, skin rash, sensitization, fatigue, reduced appetite, throat and eye irritation, cough, and skin cancer. "

Reference: [Asphalt Fumes - United States Department of Labor, Occupational Safety and Health Administration](#)

Reference: [Hot Mix Asphalt Plants - Truck Loading and Unloading](#)

" The primary emission sources associated with Hot Mix Asphalt(HMA) production are the dryers, hot bins, and mixers, which emit particulate matter (PM) and a variety of gaseous pollutants. Other emission sources found at HMA plants include storage silos, which temporarily hold the HMA; truck load-out operations, in which the HMA is loaded into trucks for hauling to the job site; liquid asphalt storage tanks; hot oil heaters, which are used to heat the asphalt storage tanks; and yard emissions, which consist of fugitive emissions from the HMA in truck beds. Emissions also result from vehicular traffic on paved and unpaved roads, aggregate storage and handling operations, and vehicle exhaust. "

" The PM emissions associated with HMA production include the criteria pollutants PM-10 (PM less than 10 micrometers in aerodynamic diameter) and PM-2.5, hazardous air pollutant (HAP) metals, and HAP organic compounds. The gaseous emissions associated with HMA production include the criteria pollutants sulfur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), and volatile organic compounds (VOC), as well as volatile HAP organic compounds. "

Reference: [EPA - Hot Mix Asphalt Plant Emission Assessment](#)

[Summary of Research on Diesel and Asphalt Hazards](#)

Toxic Smell

"It smells."

"While a state study indicates the air quality in a neighborhood next to a controversial paving plant meets safety standards, neighbors say their problems with the plant are as much about quality of life as quality of air.

The odor of asphalt coming from the R.C. & Sons paving plant has been a prime complaint of several residents of the nearby Grandview neighborhood."

Bangor Daily News - It smells, but Maine Asphalt Plant meets standards

" Dr. Mitchell said that tiny particles in asphalt production plant emissions can cause lung damage, exacerbate breathing conditions and ultimately cause more severe problems. "

New York Times Article - Who Wants to Live Near an Asphalt Plant

Noise

Here are typical noise emissions from a Hot-Mix Asphalt Plant.

Noise Level Distance from Center of Plant

85 dBA	50 feet (measured reference level)
78 dBA	100 feet
70 dBA	200 feet
63 dBA	400 feet
55 dBA	800 feet
46 dBA	1,600 feet
36 dBA	3,200 feet
24 dBA	6,400 feet

We do not know the assumptions that went into the measurements in this noise summary table.

Looking at the California study, we do not know the age or size/capacity of the plant(s) measured.

Remember that newer plants are quieter, and older plants make more noise.

Reference: Full Document - Caltrans - State of California

Overall Health Effects

" The complex chemical composition of asphalt makes it difficult to identify the specific component(s) responsible for adverse health effects observed in exposed workers. Known carcinogens have been found in asphalt fumes generated at worksites. Observations of acute irritation in workers from airborne and dermal exposures to asphalt fumes and aerosols and the potential for chronic health effects, including cancer, warrant continued diligence in the control of exposures. "

Reference: CDC - Hazard Review - Health Effects of Occupational Exposure to Asphalt

What the Federal Government Regulates on Asphalt Plants and Air Quality

What federal rules apply to asphalt plants?

- Asphalt plant emissions of particulate matter (PM2.5 and PM10, carbon monoxide, sulfur dioxide, nitrogen dioxide, and lead must not exceed National Ambient Air Quality Standards (NAAQS) at the property boundary.
- Asphalt plants manufactured after June 11, 1973, are subject to 40 CFR 60 Subpart I-New Source Performance Standards for Hot Mix Asphalt Plants. NSPS, Subpart I limits only the emissions of particulate matter from material handling systems.
- On November 8, 2002 , USEPA removed Asphalt Hot Mix Production from the Source Category List for which development of National Emission Standards for Hazardous Air Pollutants Standard is required.

Reference: [North Carolina Division of Air Quality - Air Toxics and Asphalt Plants](#)

Web Sites With More Information

Here are addition web sites that have information on Asphalt Plants and health effects.

- [Hot Mix Asphalt Plants - Stakeholders Opinions Report - US EPA](#)
- [Fact Sheet - Hot Mix Asphalt Plants - Oregon Department of Environmental Quality](#)
- [Preventing Pollution at Hot Mix Plants - A Guide to Environmental Compliance and Pollution Prevention for Asphalt Plants in Missouri - State of Missouri](#)
- [Asphalt Plant Pollution - Blue Ridge Environmental Report](#)
- [Road Paving Asphalt - State of New Hampshire - Fact Sheet](#)
- [Asphalt - Hazardous Fact Sheet - State of New Jersey](#)
- [North Carolina Division of Air Quality - Air Toxics and Asphalt Plants](#)

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We are PARC - Protectors of the Ammonoosuc River Corridor in Lisbon, New Hampshire.

You can contact PARC at

PARC
P.O. Box 515
Sugar Hill, New Hampshire.
03586

Fiscal Agent: Peter Nightingale
Phone #: (603) 616-9292

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

PO Box 88 Glendale Springs, North Carolina 28628 www.bredl.org Phone 336-982-2691 ~ Fax 336-982-2954 ~ Email bredl@skybest.com

Properties Devalued Around Pineola Asphalt Plant From Avery County Tax Department Data January 26, 2001

Parcel ID No.	valuation before	valuation after	dollar difference	percent drop	notes
184400500955	31,800	30,800	1,000	3	95 BER ADJ for location and odor
184400512610	121,400	76,100	45,300	37	1996 BER ADJ plant location
184400513659	50,900	34,900	16,000	31	1996 BER ADJ plant loc, BER 97 ADJ
184400501543	32,600	25,700	6,900	21	1996 BER ADJ Plant loc, BER 97 no change
184400406450	76,800	69,100	7,700	10	1996 BER ADJ plant loc
184400406450	23,800	16,900	6,900	29	1996 BER ADJ plant loc
184400406450	34,000	24,800	9,200	27	1996 BER ADJ plant loc
184400418234	40,600	26,200	14,400	35	1996 BER ADJ plant loc
184400418349	9,900	4,400	5,500	56	1996 BER ADJ plant loc
184400417089	32,300	24,700	7,600	24	1996 BER ADJ PLANT LOC
184400502356	12,300	9,300	3,000	24	1996 BER ADJ PLANT LOC
184400406243	20,800	14,500	6,300	30	1996 BER ADJ PLANT LOC
184300596581	71,400	53,200	18,200	25	94 PUV
All parcels total		\$148,000 loss 27% drop			
Asphalt production increased after Maymead Materials, Inc. acquired and expanded an existing plant in Pineola in Avery County. January 24, 1995 150 tons/hour and 378,000 tons/year, new state air permit (R6) issued for change in plant ownership March 29, 1996 325 tons/hour and 650,000 tons/year, new state air permit (R8) issued for expansion and relocation of plant					
Chart compiled from NC DAQ permit files and Avery County Board of Equalization Review (BER) appraisal data, February 2001 by Louis A. Zeller					

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Updated Tax Implications on Presby Gravel LLC Asphalt Plant application, March 25th 2015 Lisbon NH ZBA Meeting, PARC Presentation

Although it is not possible to know the exact effect that the installation of the asphalt plant will have on property values in Lisbon, we (PARC) have obtained a professional opinion from Mr. Alan Scott of Hollis, NH. Over the past 25 years Mr. Scott has done many appraisals in Lisbon for major financial institutions, so he is quite familiar with this area.

In Mr. Scott's estimation, the installation of the asphalt plant will result "in an average of approximately 10 to 15% reduction in the property values in the village and the surrounding areas of the town." In addition, he believes that "On average, the closer to the plant the higher the percentage of value lost."

If Lisbon were to lose 10% of its total valuation of town properties, this would equal slightly under \$11,000,000 in valuation, or \$328,830 in taxes, at the current tax rate of \$30.40 per \$1000 in assessed value. Assuming that all expenses are unchanged, this would result in a new tax rate of \$33.78 per \$1000 in assessed value, which is approximately 11.1% higher than the current tax rate.

If we were to lose 15% of the total valuation of properties in Lisbon, this would equal approximately \$16,000,000 in valuation, or \$493,246 in taxes, at the current tax rate. Again, assuming that all expenses are unchanged, this would result in a new tax rate of \$35.76 per \$1000 in assessed value, which is approximately 17.6% higher than the current tax rate.

These calculations do not take into account the assessed value of the asphalt plant. At its current Dalton location the plant was assessed at \$11,900 and the taxes paid to Dalton were \$298 for tax year 2014. We do not know what the assessed value of the proposed plant would be in Lisbon, but it appears that it would be inconsequential.

March 25, 2015

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We are PARC - Protectors of the Ammonoosuc River Corridor in Lisbon, New Hampshire.

You can contact PARC at

PARC
P.O. Box 515
Sugar Hill, New Hampshire.
03586

Fiscal Agent: Peter Nightingale
Phone #: (603) 616-9292

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Workings of the Hot Mix Asphalt Plant and the Additional Noise, Dust and Fumes They Can Create

With the possible move to Lisbon New Hampshire, of the Asphalt Plant shown on the home page, it is important to have an understanding of what the plant looks like and sounds like when it is running.

External Websites With Videos of Similar Hot Mix Asphalt Plant

Here are some additional web sites and videos from the web that show a similar working plant:

- [YouTube Video of Asphalt Plant in Motion \(4 minutes long\)](#)
- [YouTube Video of Asphalt Plant Viewed from Inside the Control Tower \(2 1/2 minutes long\)](#)
- [YouTube Video of Asphalt Plant Drying Tumbler View \(very short clip\)](#)

Workings of the Hot Mix Asphalt Plant and the Additional Noise, Dust and Fumes They Can Create

With the possible move to Lisbon New Hampshire, of the Asphalt Plant shown above, the potential new site could incur a number of new problems for the residents and businesses located near the junction of Routes 302 and 117. The comparison made here is against the current usage of the land at the Presby Gravel LLC gravel site.

The potential problem list includes:

1. Truck traffic is expected to be very heavy on Routes 302 and 117 during the paving season. People at the current location in Dalton have mentioned that either up to 60 trucks were waiting in line to load up with asphalt cement, and/or were there to dump gravel for the aggregate bins. This large number of trucks in a small area would release a large amount of diesel emissions into the immediate area.
2. In addition, the supply trucks that bring gravel and dump it multiple times a day, other trucks that bring diesel and liquid asphalt supply to the asphalt plant would add to the diesel emissions (pollution). There will be the additional noise that this traffic causes.
3. Once gravel is dumped on-site, a front loader has to move the gravel from the truck dumped piles a set of aggregate bins. The front loader has to make many trips to completely fill the bins for up to

4 truck loads of asphalt cement. Think of the forward and backward motions of the loader and the slamming of the loader into the gravel pile, and the dumping of the gravel from the front loader to the storage bins. This cycle of front loader work would result in large amounts of noise, dust and diesel emissions too.

4. The raw liquid Asphalt that is used in this plant has to be kept in a liquid state all summer long. A diesel heater has to cycle on/off day and night to keep up to 2000 gallons of asphalt as a flowing liquid. Running this heater would create more diesel emissions. When the Asphalt is heated, it gives off noxious/toxic fumes. Those fumes will propagate in all directions from the plant site (unless the wind is blowing). If you are down wind of the plant, you would smell the fumes. The distance and direction the smell travels is dependent on the local conditions (weather, temperature inversion, etc.).
5. The raw aggregate is moved from the storage bins to the large tumbling heater via conveyor belts. Both the belts and motor that drives the belts make noise. The tumbling heater is similar to your clothes dryer at home, but it is much larger in size since it has to hold tons of rock aggregate at a time. If you have had to dry a pair of sneakers in a dryer, you are familiar with the amount of noise that makes. Imagine putting a ton or more rock into dryer outside and running it. Think of the noise it would make and how that noise would carry up and down the Ammonoosuc River valley in Lisbon.
6. In addition, the movement of the aggregate from the tumbler/dryer to the top of the 58 foot elevator makes noise. The dropping of the aggregate from the top of the elevator stack and through the sorting screens and into the aggregate size sorted storage bins inside the tower makes more noise. The dropping of the aggregate bin mixes into the final spraying bin makes noise too.
7. To run the rock tumbler and produce the heat for the drying process means more diesel is being burned on-site. That would be more fumes and emissions that Lisbon does not need.
8. Dust from the aggregate mining and piling would be very heavy at times (for example, when the wind is blowing) and would interfere with external aspects of local established businesses (such as weddings all summer long at the Bishop B&B) and recreation along the Ammonoosuc River (such as fishing and kayaking).
9. Asphalt smell from the production and loading phases would be present in the air at times and would degrade the quality of life of anyone that runs into it.
10. Carcinogens released in the Asphalt Cement production and loading phases would be present in the air at times and would degrade the quality of life of anyone that runs into it.
11. Running the plant and the release of dust, asphalt and diesel emissions and carcinogens would be negative impacts that could drive the property values down of those that are closest to the plant. If their property values go down, then the town of Lisbon would have a shortfall.
12. Lisbon's current businesses closest to the proposed plant could be adversely affected by the same negative impacts.
13. The Asphalt plant's current tax payments to Dalton (\$298 per year) are insufficient to pay for potential business losses/real estate devaluations and the road destruction caused by the trucks hauling aggregate from the various gravel pits in Lisbon to the Asphalt Plant.

14. Lisbon's remaining businesses and residents would have to pay more taxes to cover the potential losses caused by the Asphalt plant. Otherwise, services would potentially have to be cut in town.

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You can contact PARC at

PARC
P.O. Box 515
Sugar Hill, New Hampshire.
03586


Fiscal Agent: Peter Nightingale
Phone #: (603) 616-9292

From:  Doug Moore <dm1050@necs.biz>

Wednesday, April 08, 2015 3:36:52 PM 

Subject: Asphalt plant

To:  **Jeffrey Morrisette**

Attachments:  Attach0.html / Uploaded File (6K)

Hi Jeff,

My name is Doug Moore residing at 43 Russell's Way with my wife and 3 kids. I have been attending some of the recent meetings regarding the asphalt plant. Understandably this has become a hotly contested issue because of what could potentially be at stake for residents that abut the Newport Materials property. I am by no means an expert when it comes to zoning laws and regulations. I also don't come armed with scientific data on sound levels and the chemical composition of pollutants that will seep into the atmosphere. I try to take a step back from all the minutia and take a common sense approach and ask why an asphalt plant in a town like Westford is being considered at all. I have not seen anyone provide any positive benefits to the residents of Westford. Conversely there has been voluminous information presented stating the potential downside to something like this. Like you, we all moved to a town like Westford to get away from urban environments to raise our families. We never thought we would have to fight for something such as this. Westford is a town that has turned away the likes of Wal-Mart and drive throughs. How can an asphalt plant be given any consideration at all? A project that would clearly put the property values in the area at risk.

The two biggest problems I see are noise and traffic. With regard to traffic I don't see any way possible that 125 additional trucks coming in and out of that property each day would not cause major traffic issues. I drive that way every day for work and trucks have a difficult time gaining speed because of the incline on Rt. 40 located approximately where the entrance to Newport Materials exists. I would call into question the traffic study that characterizes 125 additional trucks as "normal" traffic conditions. I don't see how it's possible.



As for noise, why would anyone who steps outside their house in Westford want to hear manufacturing of anything? We all purchased our homes knowing about the existing quarry. I recall going to my property prior to purchasing it and listening to see if it would be bothersome to me. I didn't hear much of anything. If the noise level of this plant were present at the time, I may have stayed away. Potential buyers for homes in our neighborhood may stay away if this plant is allowed, thus putting our property values at risk.

The planning board has no doubt witnessed the passionate pleas from the Westford residents opposing this project. I ask that you please vote down the asphalt plant and represent the wishes of the people who live in this town. Thank you for your time and your volunteer service.

Sincerely,


Doug Moore

From:  Doug Moore <dm1050@necs.biz>

Thursday, April 09, 2015 8:34:40 AM  

Subject: Public record

To:  **Jeffrey Morrisette**

Attachments:  Attach0.html / Uploaded File (4K)

Hi Jeff,




I wanted to follow up an email I sent you yesterday regarding my opposition to the Newport Materials asphalt plant. Evidently I was supposed to make it clear that my opposition should be considered public record. Therefore if you could please declare my opposition as public record, I would greatly appreciate it. Thank you.

Regards,


Doug Moore

43 Russell's Way

Westford, MA 01886

From:  Lee Moore <Lee_moore@comcast.net> Tue, Apr 07, 2015 11:46:13 PM  

Subject: Letter for Public Record Regarding the Asphalt Plant for the Planning Board

To:  **Jeffrey Morrisette**

Attachments:  Asphalt Letter to Planning Board.docx / Uploaded File (165K)

Thank you for all of your time with the various meetings and the time you take to speak with residents like myself. Hopefully we are not doing all of this in vain and we can have an impact.

~Lee Moore

April 7, 2015

To the Members of the Westford Planning Board.

I respectfully request that my letter be made part of the public record.

I want to thank you for your time and dedication to protecting the authenticity of Westford.

My husband, Doug, and I have been residents for 18 years and have a daughter at WA in the 9th grade and a son and daughter at Stony Brook in the 7th grade. We moved here 18 years ago because we sought what most residents of this beautiful town were seeking...excellent schools and good property values which will ultimately attract the best. I was raised in a town similar to Westford—Newtown, CT-- which taught me to invest in our schools and infrastructure while maintaining the beauty and desirability of the town which will ultimately continue to raise the values of our homes. What you put into a town, you will get out of it. And I never imagined that would include an asphalt plant.

I have attended many of your meetings throughout the years sacrificing personal time to be a part of the process. I sat and listened. I wasn't one of those people who reiterated information already covered and I respected the process. I attended many Board of Health meetings as well since I had two 7 year olds and a 9 year old at the time. All of us are 6 years older and wiser and have seen the process. I was thrilled in 2009 when you voted against the asphalt plant. But here we are again 6 years later after hours of litigation and hundreds of thousands of taxpayer's dollars having been spent in support of your initial decision. Our town, including this board, has spent countless hours to not give in now.

The judge has made this process more difficult for the town of Westford to deny the asphalt plant, however, there are small holes in his decision that can work in favor of denying the asphalt plant once again. In regards to sound, Newport Materials does not stay within the parameters set by the judge and will have to go the extra mile to bring the dba down in theory. But they will NOT include the rock crusher(s) which seems suspect and I would assume the cumulative noise when added to the asphalt plant will possibly exceed the dba permitted by the judge. Why not include the rock crushers unless they are afraid or know already that the dba will be too high? This leads Newport Materials to applying for a variance with the town's ZBA. It is evident that they are once again looking for our town to accommodate them after we spent several years fighting to uphold our decision.

In regards to traffic, I believe if we allow this asphalt plant to come into our town, Westford will be left with a financial burden to monitor the number of trucks and set up specific penalties if they exceed the number of trips per day. I am a witness to the fact that when a truck pulls out onto Route 40, they slow down the traffic almost to a stop at times due to their aggressive need to depart. A study will not give you real life examples. There are so many trucks already that I cannot imagine adding at least another 100 per day. Does Newport Materials have a plan in place if perhaps 40 residents decide to visit the site and that will put them over there number of trips per day? Will they turn away trucks if they have reached 125 for the day? I doubt it and how will that be monitored? Newport Materials is not looking out for the best interest of this town. They will not provide the

electronic input data for the study because they are afraid it may be manipulated. Why would they assume that? And how does Newport Materials know it can be manipulated unless they have experienced that first hand? Full exposure creates an honest, trustworthy environment on both sides. They are not being transparent for a reason and it is up to us to protect our town.

Also, I fear Chelmsford sending the trucks from their asphalt plant down Route 110 through Westford in retaliation to our restrictions which essentially direct the majority of the trucks from going right out of the facility leading them into Chelmsford. The residents of Chelmsford cannot be protected if the residents of Westford are being protected from the traffic and truck noise and pollution. I do feel for them.








As residents of this town who so graciously serve on our Planning Board, I want to ask you to deny the permits Newport Materials has applied for on the basis of not staying within the limits set forth by the judge after years of litigation. This company is not owed anything by our town if they cannot answer questions regarding acceleration of trucks, provide input data, include the rock crushers for sound evaluation and stay within the limits set by the judge. Westford said NO 6 year ago, went to court to support that decision, spent valuable money attempting to uphold that decision and now is forced to spend more time revisiting it. Westford should uphold their initial decision to deny the asphalt plant to maintain the town's authenticity and beauty which will continue to attract the best of the best!


Thank you for your time and consideration in this, but more importantly for your endless hours of dedication.

Sincerely a very concerned and dedicated resident,

Lee Moore

43 Russell's Way
Westford, MA

From:  Mark Miner <m-miner@airvana.com> Thu, Apr 09, 2015 3:22:12 PM 
Subject: Concerns regarding Asphalt plant sound issue
To:  **Jeffrey Morrisette**  mgreen@westfordma.gov
 mlewin@westfordma.gov  khollister@westfordma.gov
 dgalvin@westfordma.gov

Attachments:  Attach0.html / Uploaded File (25K)

To: The Westford Planning Board and Zoning Board
c/o Jeffrey Morrisette – Town Planner

From: Mark & Claire-Marie Miner
9 Sweetwood Circle – Westford, Ma

Subject: Proposed Asphalt plant sound issue

Due to the venue and time constraints of the last Planning Board meeting which addressed the sound issue, I was not able to voice my questions/concerns on the sound issue. Thus I would like to briefly cover them here:

In a previous note to the board I had expressed concern/confusion over the fundamental requirement of 70dBA max vs 10 dB above ambient of 43dBA (53dBA). Based on the last planning board meeting, it is now my understanding that the 53dBA is indeed the more restrictive requirement, and really the only level we need to focus on. Is that correct?

I also understand that the judge has stated that, if the Asphalt company complies to the 53dBA (and by inference the 70dBA), from a sound perspective, the board cannot block the Asphalt company based on the sound issue. Is that correct?

If the above are both true, I am concerned that the discussions at the last Planning Board meeting may have been far less productive than I would have hoped. Specifically,

- By accepting the sound simulation of the applicant, and as confirmed by the town consultant, does this absolve the applicant from meeting the 53dBA requirement when the plant is actually in operation? (I assume not)

- The town consultant generally agreed with the applicants simulation results. However, our consultant was assuming the applicant's inputs to the simulation were correct. While I would have questions around this, does it really make any difference? Isn't it really the applicant's problem if his simulations are wrong? If his simulations are incorrect, and he builds the plant and can't get to 53dBA, isn't he just wasting his money? (I assume so)
- If the plant is installed, and the applicant takes all measures possible to mitigate the noise and still cannot get down to the 53dBA number, must he cease operation? (I assume so)
- If the plant is built and actually meets the 53dBA number, and it is later concluded that the 53dBA is disturbing to our children at the nearby school (understandable concerns expressed by some that night), do we have any recourse other than to move the school? (I assume not). Alternatively if somehow we can prove now that the level the judge has set is disturbing to the children, can the town go against the judge's ruling and stop the plant? (I assume not).
- Is there any way to appeal the judge's sound limit decision, and if so, is it important to prepare for this now? (I assume this may be a follow-up?)

If the answers to the above are as I suspect (the judge's ruling stands and the plant can operate if it meets 53dBA when built, regardless of our concerns), then I would think there is little value in energies spent by the town and its citizens in determining if the applicants simulations are correct, or if 53dBA is too loud.

Instead, I feel it would be more productive to turn our attention to the measurement and enforcement of the 53dBA requirement. Key questions (and agreement between the town and applicant) that should be answered before the decision are:

1. What time average is inherent in 53dBA? Is this an average over 24 hrs, 12 hrs, 1 hr or 1 min? If undefined, the applicant can later state he is meeting this requirement over 24 hrs - at night it is very low (43dBA for example) while in the day it is higher than we are expecting (63dBA for example), yet the average is met. What if there are periods of operation where 15 min of every hr, noise is higher than 53dBA - is this acceptable? What if it's 100dBA but only for 1 min? etc. In short, would it not make sense for the board to get this clearly agreed with the applicant before the decision?
2. How will this level be monitored? Can the applicant be required to place and maintain sound sensors at agreed spots around the property boundaries and record levels per an agreed approach, with the town auditing the data on request (or as initiated by complaint by locals)?
3. If sound levels are later shown to be above 53dBA, how long does the applicant have to remedy the situation?
4. If ambient sound goes greater than 53dBA, how do we get agreement that the cause is the Asphalt plant? They may point to other operations nearby, and argue that it's not them. How will these disagreements be settled?
5. Related to the above is the subject of the rock crusher. At the meeting it was stated that the belief was that it was not operational during the ambient measurement which established the 43dBA number. It is very possible that new Asphalt demand on the recycling activity places increase demands on the rock crusher, and even though not technically part of the Asphalt plant, it is the Asphalt plant that is

leading to the noise increase from that source. Should they not be held responsible for this?

I assume there are many other questions in line with the above. So while I did learn a lot on the sound issue at the last town meeting, I am concerned that we have not yet breached the topics that may be more in line with what the town can control. Given we are running out of time, I would hope that even if the above questions cannot be worked openly in the public meetings, the board will work to make sure any final rulings give careful consideration to the above.

Again, I thank you for your efforts in this difficult process.

Sincerely,

Mark Miner

April 8, 2015

Dear Town of Westford, selectman, ZBA and Planning Board,

I am writing this letter as a concerned mother, resident of Westford and Pediatric Nurse Practitioner. I have many concerns regarding the asphalt plant in Westford. Here are a few that I feel need consideration.

My first concern is in regards to the air quality of the town and in relation to the location of two Westford schools. Asthma is a concern of many children in Westford, including my own child. Dust, mites, pollen, smells or fumes from perfumes, and simple pollutants can trigger asthma symptoms in asthmatic patients. I am concerned that although the EPA report states that the air quality of this plant is safe, I am unsure that the truck and burning asphalt pollution, chemicals, sediment and settling particles in the air will not cause harm to our developing children and will likely trigger asthma symptoms. I do not feel that an EPA report can rule out an increase in asthma symptoms for asthmatic children or prevent a life threatening asthma exacerbation in one or many of these children. The quality of life for these children will decrease as their symptoms increase. More exacerbations means missed class, missed school, poor performance in school as well as lowered test scores. Overall quality of life will decrease dramatically with an increase in air pollution in the town, as in most cities as was as reported in other towns with asphalt plants. What will we do to accommodate these children when they are ill? Please consider the clean air and green living that Westford stands for. Think of our little children, so close to the ground where the settled particles lay, think of their lungs and the amazing energy that they have for life, for running and playing outside. Please allow the children to have clean air.

The next concern that I have is noise. At the Planning Board meeting, noise was discussed. One of the residents asked the board and expert panel how noise will affect the school. The expert stated that the amount of noise that will travel to the school will not cause speech interruption. They stated that this meant that the children and teachers will not have any difficulty hearing one another while talking in a normal tone in the classroom. While this sounded promising, one question remains... will this sound be heard in the classroom while it is silent? The noise expert at the planning board meeting stated that there was no data to confirm or deny that there would be interruption in the classroom while there was no chatter going on. They do not know how much interruption of thought or how much interruption of learning that the plant will cause. Does this mean that there is a chance that while the students are working quietly or while they are taking MCAS or other testing that they may hear the rumble of trucks, the crushing of rock, the dumping of asphalt? I believe that it does. If they did not study this, then we cannot assume that it will not affect the children at the Miller and Nabnasset schools that are less than ½ mile and 1 mile away. There is a large number of children with sensory disabilities, with attention disorders and other medical diagnoses that cause difficulty with concentration in a regular classroom. Will they have even more difficulty if more noise is heard? How will we accommodate these children? How will we protect them?

One of the reasons we moved to this town because of the school system. If the town allows this plant to be built so close to the schools, many families will not want to move here, families will leave town and the school system will suffer, test scores will drop and Westford will no longer be a desirable town. I attended the School Committee meeting this past week and the asphalt plant was brought up. The school committee and superintendent expressed their concerns with the plant as well. Please consider their input as this town's success has much to do with the schools here and because of the school committee, dedicated teachers and school administration. Please do not disregard their opinions.



The integrity of the schools, the town and of the reputation that has taken years to build is at stake. Westford will not stand above other towns if the plant is developed. Westford will become just another town.

Please. Please consider the children of this town, their health and their bodies. They are our future.












Sincerely,


Kimberly Liner, PNP

9 Tenney Road

From:  Brant Berglund <brantberglund@gmail.com> Wed, Apr 08, 2015 3:59:36 PM 

Subject: For Public Record- Property Value Concerns Around Asphalt Plant

To:  **Jeffrey Morrisette**  mgreen@westfordma.gov
 mlewin@westfordma.gov  khollister@westfordma.gov
 dgalvin@westfordma.gov  kross@westfordma.gov
 asweet@westfordma.gov  dsiriani@westfordma.gov
 jsullivan@westfordma.gov  jross@westfordma.gov
 shazelton@westfordma.gov

Attachments:  Attach0.html / Uploaded File (4K)

For the Public Record-

I sincerely request that the planning board, prior to voting, consider the impact on Property Values in Westford. There has been zero discussion around this, and meeting topicality has not allowed for it to be brought forth.

If you examine the property values around existing asphalt plants, you will find that they have all dropped, seemingly on average between 15%-30% from various sites around the country.

Looking at a plant that is in Pineola, North Carolina, average values of homes have dropped 27%.
<http://www.bredl.org/air/flyers/Pineola/index.html>

Additionally, one contention in a denial of an asphalt plant application by a Planning and Zoning Board in Lisbon NH/Sugar Hill NH was indeed property value damage/depreciation. Here is a letter detailing what was prepared by their real estate expert:
<http://stoppresbyasphaltplant.org/TaxImplicationsUpdate32515.phtml>

In general the case in Lisbon/Sugar Hill NH needs to be closely examined. The application was denied there based off:

Potential Health Risks:
<http://stoppresbyasphaltplant.org/TaxImplicationsUpdate32515.phtml>

Damage to property values (:
<http://www.bredl.org/air/flyers/Pineola/index.html>

General Operational concerns:

<http://stoppresbyasphaltplant.org/GeneralAsphaltInfo.phtml>

In general, if there is not enough information present to ensure property values, health, and quality of life cannot be effected to safely approve this application prior to the

For a town that still does not have a food based drive through business due to it's dedication to the standards at the town core, you simply **cannot** rush to approval of something as drastic as an asphalt plant simply because of an imposed deadline.

More litigation is still far better than setting a dangerous precedent that Westford is disregarding it's residential nature and returning to the industrial nature of the late 1800s.

Thanks for your continued diligence in this and all matters in Westford,
Brant Berglund
Fernwood Drive

4/10/2015

Town of Westford
Planning Board and
Zoning Board of Appeals
Town Hall
55 Main Street
Westford, MA 01886

Re: Proposed Asphalt Plant

Dear Planning Board and Zoning Board of Appeals Chairs and Members,

I am writing to you regarding the proposed asphalt plant as a concerned citizen of Westford and also on behalf of my children, who are 3 and 9 years old. We reside at 270 Groton Road in Westford. The proposed asphalt plant would negatively impact my family in several ways:

1. I commute into Boston almost every weekday via Route 3, coming eastbound on Route 40. I am often caught behind a truck pulling out of Newport Materials, forced almost to a standstill while breathing harmful emissions from the truck's exhaust as I wait for the truck to accelerate. If there are an additional 250 truck trips per day in and out of Newport Materials, there will be substantial traffic jams and increased truck exhaust emissions.
2. My 3 year old attends Westford Children's Learning Center from approximately 8AM to 6PM every weekday. My 9 year old also attends after-school care there. The time that they spend outside is already precious. If the proposed asphalt plant is allowed, they will not be able to safely go outside because of the increased ambient sound and noxious chemical particulates in the air. If they do go outside, what is the risk? Based upon all of the public information on the toxicity of asphalt, would you feel comfortable allowing your children or grandchildren to play outside, less than ¼ mile from an asphalt plant?
3. I live on Groton Road, approximately 2 miles from Newport Materials. We have lived in this house for over 10 years and with the increase in truck traffic through the years, the value of our house has not increased as it may have otherwise. Even now, I sometimes cannot hear people talking, or even yelling, while we're in our yard. With an additional 250 truck trips per day in the vicinity and an asphalt plant so close, the value of our house will continue to decline. I do not understand how the sound analysis that was performed could not include noise created by the trucks, and I respectfully request that the Boards re-evaluate this element of the analysis.
4. Assuming we don't move (and if the asphalt plant does come, we will move), my 3 year old will attend Miller School, already a school with one of the highest asthma rates in the state.

5. My family and I own a cottage in Summer Village, also approximately 2 miles from the proposed plant. We all swim in Long Sought For Pond. Who's going to seek the Pond, swim in it, or eat its fish when it's polluted through ground water and air contamination? One of the key attractions of Summer Village is that everyone's outside all day long. Are we going to be able to do this without risking our health? And, of course, what about negative impact to the value of the cottages?

The 5 factors listed above are not just how the proposed asphalt plant would negatively impact me and my family, but hundreds of other families in the vicinity. I greatly appreciate your hard work and dedication spent on this difficult case, and I applaud those of you who have denied Newport Material's petitions and requested waivers. For those who are undecided or in favor of the plant, please consider the factors above, not just how they'll impact my family but yours, as residents of Westford, as well.

In conclusion, I appreciate your consideration and I respectfully request that the Planning and Zoning Boards deny all of Newport's petitions and requested waivers.

Sincerely,

Jocelyn Bishop